

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

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

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

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

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

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

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

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

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

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

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and the Records Center is unable to locate an authorized agency to provide destruction approval or the agency is obsolete, the records will become the official custody of the Utah State Archives and the State Archivist will determine the disposition of the records.

KEY: records retention, public information, access to information

December 31, 2013

63A-12-104

Notice of Continuation May 17, 2013

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

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

R17-8-2. Micrographic Standards.

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

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

(3) The State Archives is the official custodian of all master microfilm.

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

KEY: records retention, public information, access to information

December 31, 2013

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Notice of Continuation May 17, 2013

R52. Agriculture and Food, Horse Racing Commission (Utah).**R52-7. Horse Racing.****R52-7-1. Authority.**

Promulgated under authority of Section 4-38-4.

R52-7-2. Definitions.

The following definitions shall apply in these rules unless otherwise indicated.

1. "Act" means the Utah Horse Regulation Act.
2. "Added money" means all monies added to the fees paid by the horsemen into the purse for a race.
3. "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.
4. "Also Eligible" pertains to (a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to scratch time deadline; (b) the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.
5. "Arrears" means money past due for entrance fees, jockey fees, or nomination or supplemental fees in nomination races, and therefore in default incidental to these Rules or the conditions of a race.
6. "Authorized Agent" means a person appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the Agent will act. Said instrument must be on file with the Commission and its authorized representatives.
7. "Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.
8. "Breeder" of a horse is the owner or lessee of its dam at the time of breeding.
9. "Closing" means the time published by the organization after which nominations or entries will not be accepted for a race.
10. "Commission" means the Utah Horse Racing Commission.
11. "Commissioner" means a member of the Commission.
12. "Conditions of a race" are the qualifications which determine a horse's eligibility to enter.
13. "Day" is a period of 24 hours beginning at midnight.
14. "Race day" is a day during which horse races are conducted.
15. "Declaration" means the act of withdrawing an entered horse from a race before the closing of overnight entries.
16. "Drug (Medication)" means a substance foreign to the normal physiology of the horse.
17. "Enclosure" means all areas of the property of an organization licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the organization licensee.
18. "Entry" means a horse made eligible to run in a race.
19. "Family" means a husband, wife and any dependent children.
20. "Field" means all horses competing in a race.
21. "Financial Interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.
22. "Foreign Substances" are all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include but not be limited

to all narcotics, stimulants, or depressants.

23. "Foul" means an action by any horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

24. "Horse" means an equine of any breed and includes a stallion, gelding, mare, colt, filly, spayed mare or ridgeling.

25. "Horse Racing" means any type of horse racing, including Arabian, Appaloosa, Paint, Pinto, Quarter Horse, and Thoroughbred horse racing.

26. Horse Racing Types:

A. "Appaloosa Horse Racing" means the form of horse racing in which each participating horse is an Appaloosa horse registered with the Appaloosa Horse Club or any successor organization and mounted by a jockey.

B. "Arabian Horse Racing" means the form of horse racing in which each participating horse is an Arabian horse registered with the Arabian Horse Club Registry of America and approved by the Arabian Horse Racing Association of America or any successor organization, mounted by a jockey, and engaged in races on the flat over a distance of not less than one-quarter mile or more than four miles.

C. "Paint Horse Racing" means the form of horse racing in which each participating horse is a Paint horse registered with the American Paint Horse Association or any successor organization and mounted by a jockey.

D. "Pinto Horse Racing" means the form of horse racing in which each participating horse is a Pinto horse registered with the Pinto Horse Association of America, Inc., or any successor organization and mounted by a jockey.

E. "Quarter Horse Racing" means the form of horse racing where each participating horse is a Quarter Horse registered with the American Quarter Horse Association or any successor organization, mounted by a jockey, and engaged in a race over a distance of less than one-half mile.

F. "Thoroughbred Horse Racing" means the form of horse racing in which each participating horse is a Thoroughbred horse registered with the Jockey Club or any successor organization, mounted by a Jockey, and engaged in races on the flat.

27. "Inquiry" means the stewards immediate investigation into the running of a race which may result in the disqualification of one or more horses.

28. "Jockey" means the rider licensed to race.

29. "Jockey Agent" means a licensed authorized representative of a jockey.

30. "Lessee" means a licensed owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the registration certificate and on file with the Commission.

31. "Lessor" means the owner of the horse that is leased.

32. "Maiden" means a horse that has never won a race recognized by the official race records of the particular horse's breed registry. A maiden which has been disqualified after finishing first is still a maiden.

33. "Minor" means any individual under 18 years of age.

34. "Nominator" means the person who nominated the horse as a possible contender in a race.

35. "Objection" means:

A. A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered;

B. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owners licensed Authorized Agent before the race is declared official.

36. "Occupation License" means a requirement for any person acting in any capacity within the enclosure during the race meeting.

37. "Occupation Licensee" means a person who has

obtained an occupation license.

38. "Utah Bred Horse" means a horse that is sired by a stallion standing in Utah.

39. "Organization License" means a requirement of any person desiring to conduct a race meeting within the state of Utah.

40. "Organization Licensee" means any person receiving an organization license. Owner is any person who holds, in whole or in part, any rights title or interest in a horse, or any lessee of a horse who has been duly issued a currently valid owner's license as a person responsible for such horse.

41. "Person" means any individual, corporation, partnership, syndicate, another association or entity.

42. "Post Position" means the position in the starting gate assigned to the horse for the race.

43. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

44. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R52-7-10(8).

45. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

46. "Allowance" means a race in which eligibility and/or the weight to be carried are based upon the horse's past performance over a specified time.

47. "Handicap" means a race in which the weights to be carried by the entered horses are assigned according to the Racing Secretary's evaluation of each horse's potential for the purpose of equalizing their respective chances of winning.

48. "Invitational" means a race in which the competing horses are selected by inviting their owners to enter specific horses.

49. "Match" means a race contest between two horses with prior consent by the Commission under conditions agreed to by the owners.

50. "Nomination" means a race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least 72 hours before the first post time of the day the race is originally scheduled to be run.

51. "Progeny" means a race restricted to the offspring of a specific stallion or stallions.

52. "Purse Race (Overnight)" means any race in which entries close less than 72 hours prior to its running.

53. "Schooling Race" means a preparatory race for entry qualification in official races which conform to requirements adopted by the Commission.

54. "Stakes" means a race which is eligible for stakes or "black-type" recognition by the particular breed registry.

55. "Trials" means a set of races in which eligible horses compete to determine the finalists for a purse in a nominated race.

56. "Restricted Area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to, the barn area, paddock, test barn, Stewards Tower, race course, or any other area designated restricted by the organization licensee and/or the Commission. Signs giving notice of restricted access shall be prominently displayed at all entry points.

57. "Rules" means the rules herein prescribed and any amendments or additions.

58. "Scratch" means the act of withdrawing an entered horse from a race after the closing of overnight entries.

59. "Scratch Time" means the deadline set by the organization licensee for the withdrawing of entered horses.

60. "Starter" means the horse whose stall door of the starting gate opens in front of such horse at the time the starter (the Official) dispatches the horses.

61. "Subscription" means the act of nominating a horse to a nomination race.

62. "Week" means a period of seven days beginning at 12:01 a.m., Monday during which races are conducted.

R52-7-3. Commission Powers and Jurisdiction.

1. Description and Powers. The Utah Horse Racing Commission is an administrative body created by Section 4-38-3. The Commission consists of five members which are appointed by the governor, and whose powers and duties are prescribed by the legislature. The Commission appoints an executive director who is the administrative head of the agency, and the Commission determines the duties of the executive director. The Commission shall have supervision of all sanctioned race meetings held in the State of Utah, and all occupation and organization licensees in the State and all persons on the property of an organization licensee.

2. Jurisdiction. Without limitations by specific mention hereof, the stated purposes of the Rules and Regulations hereby promulgated are as follows:

A. To encourage agriculture and breeding of horses in this State; and

B. To maintain race meetings held in the State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; and

C. To maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and

D. To generate public revenues.

E. Commission jurisdiction of a race meet commences one hour prior to post time and ends one hour following the last posted race.

3. Controlling Authority. The law, the rules, and the orders of the Commission supersede the conditions of a race meeting and govern Thoroughbred, Quarter Horse, Appaloosa, Arabian, Paint and Pinto racing, except in the event it can have no application to a specific type of racing. In the latter case, the Stewards may enforce rules or conditions of The Jockey Club for Thoroughbred racing, the American Quarter Horse Association for Quarter Horse racing; the Appaloosa Horse Club for Appaloosa racing; the Arabian Horse Racing Association of America for Arabian racing; the American Paint Horse Association for Paint racing; and the Pinto Horse Association of America, Inc., for Pinto racing; if such rules or conditions are not inconsistent with the Laws of the State of Utah and the Rules of the Commission.

4. Punishment By The Commission. Violation of the Act and rules promulgated by the Commission, whether or not a penalty is fixed therein, is punishable in the discretion of the Commission by denial, revocation or suspension of any license; by fine; by exclusion from all racing enclosures under the jurisdiction of the Commission; or by any combination of these penalties. Fines imposed by the Commission shall not exceed \$10,000 against individuals for each violation, any Rules or regulations promulgated by the Commission, or any Order of the Commission; or for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing, according to Subsection 4-38-9(2).

5. Extension For Compliance. If a licensee fails to perform an act or obtain required action from the Commission within the time prescribed therefore by these Rules, the Commission, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

6. Notice To Licensee. Whenever notice is required to be given by the Commission or the Stewards, such notice shall be

given in writing by personal delivery to the person to be notified or by mailing, Certified Mail, Return Receipt Requested, such notice to the last known address furnished to the Commission; or may be given as is provided for service of process in a civil proceeding in the State of Utah and pursuant to the Administrative Procedures Act.

7. Location For Information Or Filing With Commission.

When information is requested or a notice in any matter is required to be filed with the Commission, such notice shall be delivered to an authorized representative of the Commission at an office of the Commission on or before the filing deadline. Offices of the Commission are currently located at: State of Utah, Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT 84116.

8. Public Inspection Of Documents. All forms adopted by the Commission together with all Rules and other written statements of policy or interpretation; and all final orders, decisions, and opinions, formulated, adopted or used by the Commission in the discharge of its functions are available for public inspection at the above office.

9. Forms And Instruction. The following forms and instructions for their use have been adopted by the Commission:

- Apprentice Jockey Certificate
- Authorized Agent Agreement
- Fingerprint Card
- Identifier's Daily Report
- Lease Agreement
- Occupation Licensee Application(s)
- Occupation License Renewal Application(s)
- Open Claim Certificate
- Organization's Daily Report
- Organization Licensee Application
- Petition for Declaratory Ruling
- Petition for Promulgation, Amendment or Repeal of Rule
- Petition in and before the Utah Horse Commission
- Postmortem Examination Report
- Stable Name, Corporation, Partnership or Syndicate

Registration Form

- Stewards' Daily Report
- Stewards' Hearing Notice
- Stewards' Hearing Reports
- Subpoena (Steward and Commission)
- Test Barn Diuretic Approval Form

10. Forms for substituting petitions for promulgating or repealing of rules, and for requests for declaratory ruling are available at the Utah State Department of Agriculture and Food.

R52-7-4. Racing Organization.

1. Allocation Of Racing Dates. The Commission shall allocate racing dates for the conduct of horse race meetings within this State for such time periods and at such racing locations as the Commission determines will best serve the interests of the people of the State of Utah in accordance with the Utah Horse Act. Upon a finding by the Commission that the allocation of racing dates for any year is completed, the racing dates so allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of allocation.

2. Application For License And Days To Conduct A Horse Race Meeting. Every person who intends to conduct a horse race meeting shall file such application with the Commission no later than August 1 of the preceding calendar year. Any prospective applicant for license and days to conduct a horse race meeting failing to timely file the application for license may be disqualified and its application for license refused summarily by the Commission.

3. Commission May Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed

proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting; all in addition to that required in the application form set forth in Subsection R52-7-4(4) and as required by Section 4-38-4.

4. Application For Organization License. Any person desiring to conduct a horse race meeting where the public is charged an admission fee shall apply to the Commission for an organization license. The application shall be made on a form prescribed and furnished by the Commission. The application shall contain the following information:

A. The dates on which and location where the applicant intends to conduct the race meeting.

B. The name and mailing address of the person making the application.

1. If the applicant is a corporation, a certified copy of the Articles of Incorporation and Bylaws; the names and mailing addresses of all stockholders who own at least 3% of the total stock issued by the corporation, officers, and directors; and the number of shares of stock owned by each.

2. If the applicant is a partnership, a copy of the partnership agreement, and the names and mailing addresses of all general and limited partners with a statement of their respective interest in the partnership.

C. Description of photographic equipment, video equipment, and copies of any proposed lease or purchase contract or service agreement in connection therewith.

D. Copies of any agreements with concessionaires or lessees, together with schedules of rates charged for performance of any service or for sale of any article within the enclosure, whether directly or through the concessionaire.

E. Schedule of admission price(s) to be charged.

F. Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year. All financial information shall be accompanied by an unqualified opinion of a Certified Public Accountant; or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

G. A schedule of stall rent, entry fees, or any other charges to be made to the horsemen or public not mentioned above.

H. Any other information the Commission may require. For applicants requesting to conduct non pari-mutuel racing, the licensee fee shall not be less than \$25.00.

A separate application upon a form prescribed and furnished by the Commission shall be filed for each race meeting which such person proposes to conduct. The application, if made by a person, shall be signed and verified under oath by the person; and if made by more than one person or by a partnership, shall be signed and verified under oath by at least two of the persons or members of the partnership; and if made by an association, a corporation, or any other entity, shall be signed by the President, attested to by the Secretary under the seal of such association or corporation, if it has a seal, and verified under oath by one of the signing officers.

No person shall own any silent or undisclosed interest in any entity requesting an organization license. No organization license shall be issued to any applicant that fails to comply with provisions of this Rule. No incomplete license application shall be considered by the Commission.

I. In considering the granting or denying of all organization's application for a license to conduct horse racing

with the non pari-mutuel system of wagering, the following criteria, standards, and guides should be considered by the Commission:

1. Public Interest
 - a. Safety
 - b. Morals
 - c. Security
 - d. Municipal Comments
 - e. Revenues: State and Local
2. Track Location
 - a. Traffic Flow
 - b. Support Services (i.e., hotels, restaurants, etc.)
 - c. Labor Supply
 - d. Public Services (i.e., police, fire, etc.)
 - e. Proximity to Competition
3. Number of Tracks Running or Making Application
 - a. Size
 - b. Type of Racing
 - c. Days
4. Adequacy of Track Facilities
5. Experience in Racing of Applicant and Management
 - a. Length
 - b. Type
 - c. Success/Failure
6. Financial Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
 - a. Financial History
 - (1) Records
 - (2) Net Worth
7. Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
 - (1) Arrest Record
 - (2) Conviction Record
 - (3) Litigation Record (Civil/Criminal)
 - (4) Law Enforcement Intelligence
 8. Official Attitude of Local Government Involved
 9. Anticipated Effect Upon Breeding and Horse Industry in Utah
 10. Effect on Saturation of Non pari-Mutuel Market
 11. Anticipated Effect upon State's Economy
 - a. General Economy
 - (1) Tourism
 - (2) Employment
 - (3) Support Industries
 - b. Government Revenue
 - (1) Tax (Direct/Indirect)
 - (2) Income (Direct/Indirect)
 12. Attitude of Local Community Involved
 13. The Written Attitude of Horse Industry Associations
 14. Experience and Credibility of Consultants, Advisors, and Professionals
 - a. Feasibility
 - b. Credibility and Integrity of Feasibility Study
 15. Financial and Economic Integrity of Financial Plan
 - (1) Equity
 - a. Source
 - b. Amount
 - c. Position
 - d. Type
 - (2) Debt
 - a. Source
 - b. Amount
 - c. Terms
 - d. Repayment
 - (3) Equity to Debt Ratio
 - a. Integrity of Financing Plan
 - (1) Identity of Participants

- (2) Role of Participants
- (3) History of Participants
- (4) Law Enforcement Intelligence

16. Apparent or Non-Apparent Hope of Financial Success

5. List Of Shareholders. Each organization shall, if a corporation or partnership, maintain a current list of shareholders and the number of shares held by each; and such list shall be available for inspection upon demand by the Commission or its representatives. The organization shall immediately inform the Commission of any change of corporate officers or directors, general or managing partners, or of any change in shareholders; provided, however, that if the organization is a publicly-held entity, it shall disclose the names and addresses of shareholders who own 3% of the outstanding shares of the organization. The organization shall immediately notify the Commission of all stock options, tender offers, and any anticipated stock offerings. The Commission may refuse to issue a license to, or suspend the license of, any organization which fails to disclose the real name of any shareholders.

6. Denial Of License. The Commission may deny a license to conduct a horse racing meeting when in its judgment it determines the proposed meeting is not in the public interest, or fails to serve the purposes of the Utah Horse Act, or fails to meet any requirements of Utah State law or the Commission's rules. The Commission shall refuse to issue a license to any applicant who fails to provide the Commission with evidence of its ability to meet its estimated financial obligations for the conduct of the meeting.

7. Duty Of Licensed Organization. Each organization shall observe and enforce the rules of the Commission. The license is granted on the condition that the organization, its officials, its employees and its concessionaires shall obey all decisions and orders of the Commission. The organization shall not allow any wagering within the enclosure of the racing facility which might be construed as being in violation of the Laws of the State of Utah.

8. Conditions Of A Race Meeting. The organization may impose conditions for its race meeting as it may deem necessary; provided, however, that such conditions may not conflict with any requirements of Utah State Law or the Rules, Regulations and Orders of the Commission. Such conditions shall be published in the Condition Book or otherwise made available to all licensees participating in its race meeting. A copy of the conditions and nomination race book shall be published no later than 45 days prior to the commencement of the race meeting. A proof of such conditions and nomination race book shall be filed with the Commission no later than 45 days prior to printing. The conditions and nomination race book is subject to the approval of the Commission. The organization may impose requirements, qualifications, requisites, and track rules for its race meeting as it may deem necessary; provided such requirements, qualifications, and track rules do not conflict with Utah State Law or the Rules, Regulations, and Orders of the Commission. Such information shall be published in the Condition Book, posted on the organization's bulletin boards, or otherwise made available to all licensees participating at its race meeting.

All requirements, qualifications, requisites or track rules imposed by the organization require prior review and approval by the Commission, which reserves the right of final decision in all matters pertaining to the conditions of a race meeting.

9. Right Of Commission To Information. The organization may be asked to furnish the Commission, on forms approved by the Commission, a daily itemized report of the receipts of attendance, parking, concessions, commissions, and any other requested information. The organization shall also provide a corrected official program, completed race results charts approved by the Commission, and any other information the Commission may require. Such daily reports shall be filed

with the Commission within 72 hours of the race day.

10. **Duty To Compile Official Program.** The organization shall compile an official program for each racing day which shall contain the names of the horses which are to run in each race together with their respective post positions, post time for first race, age, color, sex, breeding, jockey, trainer, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run, the value of each race, a list of Racing Officials and track management personnel, and any other information the Commission may require. The Commission may direct the organization to publish in the program any other information and notices to the public as it deems necessary.

11. **Duty To Maintain Racing Records.** The organization shall maintain a complete record of all races of all authorized race meetings of the same type of racing being conducted by the organization, and such records shall be maintained and retained for a period of five years. This requirement may be met by race records of Triangle Publications, the American Quarter Horse Association, the Appaloosa Horse Club, the American Paint Horse Association, other breed registry associations' racing records department, or other racing publications approved by the Commission.

12. **Horsemen's Bookkeeper.** The organization shall employ a Horsemen's Bookkeeper who shall maintain records as the organization and Commission shall direct. The records shall include the name, address, social security or federal identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horseman's account. The Horsemen's Bookkeeper shall keep the riding accounts of the jockeys and shall disburse the received fees to the proper claimants. It shall be the duty of the Horsemen's Bookkeeper to receive and disburse the purses of each race and all stakes, entrance money, jockey fees, and other monies that properly come into his possession, and make disbursements within 48 hours of receipt of notification from the testing laboratory that drug tests have cleared unless an appeal or protest has been filed with the Stewards or the Commission. The Horsemen's Bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due; except upon written request, the Horsemen's Bookkeeper shall, within 30 days after the meeting, disburse all monies to the persons entitled to receive the same. The Horsemen's Bookkeeper shall maintain a file of all required statements of partnerships, syndicates, corporations; assignments of interest; lease agreements; and registrations of authorized agents. All records and monies of the Horsemen's Bookkeeper shall be kept separate and apart from any other of the organization and are subject to inspection by the Commission at any time.

13. **Accounting Practices And Responsibility.** The organization and its managing officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the Act, the Rules and Regulations of the Commission, the organization rules, and race conditions. Copies of all nomination payment race contracts, agreements, and conditions shall be submitted to the Commission and related reporting requirements fulfilled as specified by the Commission. Subject to approval of the Commission, the organization shall maintain on a current basis a bookkeeping and accounting program under the guidance of a Certified Public Accountant. The Commission may require periodic audits to determine that the organization has funds available to meet those distributions for the purposes required by the Act, the Rules and Regulations of the Commission, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race meeting. Annually, the organization shall file a copy

of all tax returns, a balance sheet, and a profit and loss statement.

14. **Electronic Photo Finish Device.** All organizations shall install and maintain in good service an electronic photo finish device for photographing the finishes of all races and recording the time of each horse in hundredths of a second, when applicable, to assist the placing judges and the Stewards in determining the finishing positions and time of the horses. Prior to first use, the electronic photo finish device must be approved by the Commission; and a calibration report must be filed with the Commission by January 1 of each year. A photograph of each finish shall be promptly posted for public view in at least one conspicuous place in the public enclosure.

15. **Videotape Recording Of Races.** All organizations shall install and operate a system to provide a videotape recording of each race so that such recording clearly shows the position and action of the horses and jockeys at close enough range to be easily discernible. A video monitor shall be located in the Stewards' Tower to assist in reviewing the running of the races. Prior to first use, the videotape recording system and location and placement of its equipment must be approved by the Commission. Every race other than a race run solely on a straight course may be recorded by use of at least two cameras to provide panoramic and head-on views of the race. Races run solely on the straight course shall be recorded by the use of at least one camera to provide a head-on view. Except with prior approval of the Commission, all organizations shall maintain an auxiliary videotape recording camera and player in case of breakdown and/or malfunction of a primary videotape recording camera or player.

16. **Identification Of Photo Finish Photographs And Videotape Recordings.** All photo finish photographs and videotape recordings required by these Rules shall be identified by indicating thereon, the date, number of the race, and the name of the racetrack at which the race is held.

17. **Altering Official Photographs Or Recordings.** No person shall cut, mutilate, alter or change any photo finish photograph or videotape recording for the purpose of deceit or fraud of any type.

18. **Preservation Of Official Photographs And Recordings.** All organizations shall preserve all photographic negatives and videotape recordings of all races for at least 180 days after the close of their meeting. Upon request of the Commission, the organization shall furnish the Commission with a clear, positive print of any photograph of any race, or a kinescope print or copy of the videotape recording of any race.

19. **Viewing Room Required.** The organization shall maintain a viewing room for the purpose of screening the videotape recording of the races for viewing by Racing Officials, jockeys, trainers, owners, and other interested persons authorized by the Stewards.

20. **Office Space For The Commission.** The organization shall provide within the enclosure adequate office space for use by the Commission and its authorized representatives, and shall provide such necessary office furniture and utilities as may be required for the conduct of the Commission's business and the collection of the public revenues at such organization's meetings.

21. **Duty To Receive Complaints.** The organization shall maintain a place where written complaints or claims of violations (objections) of racetrack rules, regulations, and conditions; Commission Rules and Regulations; or Utah State Laws may be filed. A copy of any written complaint or claim filed with the organization shall be filed by the organization with the Commission or Commission representatives within 24 hours of receipt of the complaint or claim.

22. **Bulletin Boards Required.** The organization shall erect and maintain a glass enclosed bulletin board close to the Racing Secretary's Office in a place where access is granted to

all licensees, upon which all official notices of the Commission shall be posted. The organization shall also erect and maintain a glass enclosed bulletin board in the grandstand area where access is granted to all race day patrons, upon which all official notices of the Commission shall be posted.

23. **Communication Systems Required.** The organization shall install and maintain in good service a telephonic communication system between the Stewards' stand, racing office, jockey room, paddock, testing barn, starting gate, video camera locations, and other designated places. The organization shall also install and maintain in good service a public address communication system for the purpose of announcing the racing program, the running of the races, and any public service notices, as well as maintaining communications with the barn area for the purpose of paddock calls and the paging of horsemen.

24. **Ambulance Service.** Subject to the approval of the Commission, the organization shall provide the services of an approved medical ambulance and its properly qualified attendants at all times during the running of the race program at its meeting and, except with prior permission of the Commission, during the hours the organization permits the use of its race course for training purposes. The organization shall also provide the service of a horse ambulance during the same hours. A means of communication shall be provided by the organization between a staffed observation point (Stewards' Tower and Clocker's Stand) for the race course and the place where the required ambulances and their attendants are posted for prompt response in the event of accident to any person or horse. In the event an emergency necessitates the departure of a required ambulance, the race course shall be closed until an approved ambulance is again available within the enclosure.

25. **Safety Of Race Course And Premises.** The organization shall take cognizance of any complaint regarding the safety or uniformity of its race course or premises, and shall maintain in safe condition the race course and all rails and other equipment required for the conduct of its races.

26. **Starting Point Markers And Distance Poles.** Permanent markers must be located at each starting point to be utilized in the organization's racing program. The starting point markers and distance poles must be of a size and in a position where they can be seen clearly from the stewards' stand. The starting point markers and distance poles shall be marked with the appropriate distance and be the following colors:

TABLE

1/16 poles . . .	black and white horizontal stripes
1/8 poles . . .	green and white horizontal stripes
1/4 poles . . .	red and white horizontal stripes
220 yards . . .	green and white horizontal stripes
250 yards . . .	blue
300 yards . . .	yellow
330 yards . . .	black and white horizontal stripes
350 yards . . .	red
400 yards . . .	black
440 yards . . .	red and white horizontal stripes
550 yards . . .	black and white horizontal stripes
660 yards . . .	green and white horizontal stripes
770 yards . . .	black and white horizontal stripes
870 yards . . .	blue and white horizontal stripes

27. **Grade And Distance Survey.** A survey by a licensed surveyor of the race course, including all starting chutes, indicating the grade and measurement of distances to be run must be filed with the Commission prior to the first race meeting.

28. **Physical Requirements For Non pari-Mutuel Racing Facility.** In order for an organization to be granted a license to conduct non pari-mutuel racing, the facility shall meet the following physical requirements:

A. A regulation track shall be a straightaway course of 440 yards in length. The straightaway shall connect with an oval not

less than one-half mile in circumference; except that the width may vary according to the number of horses started in a field, but a minimum of twenty feet shall be allowed for the first two horses with an additional five feet for each added starter.

B. The inner and outer rails shall extend the entire length of the straightaway and around the connecting oval; it shall be at least thirty inches and not more than forty-two inches in height. A racetrack not approved by the Commission prior to January 1, 1993, shall otherwise have inner and outer rails of at least thirty-eight inches (38") and not more than forty-two inches in height. It shall be constructed of metal not less than two inches in diameter, wood not less than two inches in thickness and six inches in width, or other construction material approved by the Commission. Whatever construction material is used must provide for the safety of both horse and rider. It must be painted white and maintained at all times.

C. Stabling facilities should be adequate for the number of horses to be on hand for the meet. In no case will a track with less than 200 stalls be acceptable, without Utah Horse Commission approval.

D. Stands for Stewards and Timers shall be located exactly on the finish line and provide a commanding and uninterrupted view of the entire racing strip.

E. The paddock shall be spacious enough to provide adequate safety. The jockey's room shall be in or adjacent to the paddock enclosure and shall be equipped with separate but equal complete sanitation facilities including showers for both male and female riders. This area must be fenced to keep out unauthorized persons and provide maximum security and safety. The fence shall be at least four feet high of chain link, v-mesh or similar construction.

F. A Test Barn with a minimum of two stalls shall be provided for purpose of collecting urine specimens. The Test Barn and a walking ring large enough to accommodate several horses cooling out at the same time shall be completely enclosed by a fence at least eight feet high of chain link, v-mesh or similar construction. There shall be only one entrance into the Test Barn enclosure which shall remain locked or guarded at all times. Provisions shall be made in this area for an office to accommodate the needs of the Official Veterinarian and from which he can observe the stalls and the entrance into the Test Barn enclosure. The organization shall provide facilities for the immediate cooling and freezing of all urine specimens, and shall make provisions for the specimens to be shipped to the laboratory packed in dry ice.

G. A grandstand or bleachers shall be provided for the spectators and shall provide for the comfort and safety of the spectators. Facilities must include rest rooms and a public water supply.

29. **Organization As The Insurer Of The Race Meeting.** Approval of a race meeting by the Commission does not establish said Commission as the insurer or guarantor of the safety or physical condition of the organization's facilities or purse of any race. The organization does thereby agree to indemnify, save and hold harmless the Utah Horse Commission from any liability, if any, arising from unsafe conditions of track facilities or grandstand and default in payment of purses. The organization shall provide the Commission with a certificate of adequate liability insurance.

R52-7-5. Occupation Licensing and Registration.

1. **Occupation Licenses.** No person required to be licensed shall participate in a race meeting without their holding a valid license authorizing that participation. Licenses shall be obtained prior to the time such persons engage in their vocations upon such racetrack grounds at any time during the calendar year for which the organization license has been issued. Applicant will be required to provide one form of photo identification.

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses.

B. A person acting in any of the following capacities shall pay the required fee and procure the appropriate license or licenses: (A list of all required fees shall be available at the Utah Department of Agriculture and Food.)

1. Owner/Trainer Combination
2. Owner
3. Trainer
4. Assistant Trainer
5. Jockey
6. Veterinarian
7. Jockey Room Attendant
8. Paddock Attendant
9. Pony Rider
10. Concessionaire
11. Valet
12. Groom

C. A person whose license-identification badge is lost or destroyed shall procure a replacement license-identification badge and shall pay the required fee.

D. The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license or registration shall expire on December 31 of the year in which it is issued. A license renewal shall be on an annual basis beginning January 1.

E. All license applicants may be required to provide two complete sets of fingerprints on forms provided by or acceptable to the Commission and pay the required fee for processing the fingerprint cards through State and Federal Law Enforcement Agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be refingerprinted.

F. All applicants for occupation licenses must be a minimum of 16 years of age. However, this shall not preclude dependent children under the age of 16 from working for their parents or guardian if said parents or guardian are licensed as a trainer or assistant trainer and permission has been obtained from the organization licensee. A trainer or his authorized representative signing a Test Barn Sample Tag must be licensed and a minimum of 18 years of age.

2. Employment Of Unlicensed Person. No organization, owner, trainer or other licensee acting as an employer within the enclosure at an authorized race meeting shall employ or harbor within the enclosure any person required to be licensed by the Commission until such organization, owner, trainer, or other employer determines that such person required to be licensed has been issued a valid license by the Commission. No organization shall permit any owner, trainer, or jockey to own, train, or ride on its premises during a recognized race meeting unless such owner, trainer, or jockey has received a license to do so from the Commission. The organization or prospective employer may demand for inspection the license of any person participating or attempting to participate at its meeting, and the organization may demand for inspection the documents relating to any horse on its grounds.

3. Notice Of Termination. Any organization, owner, trainer, or other licensee acting as an employer within the enclosure at an authorized race meeting shall be responsible for the immediate notification to the Commission and the organization conducting the race meeting of a termination of employment of a licensee. The employer shall make every effort to obtain the license badge from the employee and deliver the license badge to the Commission.

4. Application For License. An applicant for license shall apply in writing on the application forms furnished by the Commission.

5. License Identification Badge Requirements. The license identification badge may consist of the following information

concerning the licensee:

- A. Full Name
- B. Permanent Address
- C. License Capacity
- D. Date of Issue
- E. Passport-Type Color Photograph
- F. Date of Birth

All license identification badges may be color coded as to capacity of occupation and eligibility for access to restricted areas. All license holders, except jockeys riding in a race, must wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R52-7-5(1).

6. Honoring Official Credentials. Credentials issued by the Commission may be honored for admission at all gates and entrances and to all places within the enclosure. Automobiles with vehicle decals issued by the Commission to its members and employees shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members, and staff shall be honored by the organization for admission into the public enclosure when presented therefore by such persons.

7. License Subject To Conditions And Agreements.

A. Every license is subject to the conditions and agreements contained in the application therefore and to the Statutes and Rules.

B. Every license issued to a licensee by the Commission remains the property of the Commission.

C. Possession of a license does not, as such, confer any right upon the holder thereof to employment at or participation in a race.

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, R52-7-5(9).

8. Changes In Application Information. Each licensee or applicant for license shall file with the Commission his permanent and his current mailing address and shall report in writing to the Commission any and all changes in application information.

9. Grounds For Denial, Refusal, Suspension Or Revocation Of License. The Commission, in addition to any other valid ground or reason, may deny, refuse to issue, suspend or revoke an occupation license for any person:

A. Who has been convicted of a felony of this State, any other state, or the United States of America; or

B. Who has been convicted of violating any law regarding gambling or controlled dangerous substance of this State, any other state, or of the United States of America; or

C. Who is unqualified to perform the duties required of the applicant; or

D. Who fails to disclose or states falsely any information required in the application; or

E. Who has been found guilty of a violation of any provision of the Utah Horse Act or of the Rules and Regulations of the Commission; or

F. Whose license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused or denied for just cause in any other competent racing jurisdiction; or

G. Who has been or is currently excluded from any racing enclosure by a competent racing jurisdiction.

10. Examinations. The Commission may require the applicant for any license to demonstrate his knowledge, qualifications, and proficiency for the license applied for by such examination as the Commission may direct.

11. Refusal Without Prejudice. A refusal to issue a license (as distinguished from a denial of a license) to an applicant by the Commission at any race meeting is without prejudice; and the applicant so refused may reapply for a license at any

subsequent or other race meeting, or he may appeal such refusal to the Commission for hearing upon his qualifications and fitness for the license.

12. **Hearing After Denial Of License.** Any person who has had his license denied may petition the Commission to reopen the case and reconsider its decision upon a sufficient showing that there is now available evidence which could not, with the exercise of reasonable diligence, have been previously presented to the Commission. Any such petition must be filed with the Commission no later than 30 days after the effective date of the Commission's decision in the matter. Any person who has been denied a license by the Commission may not refile a similar application for license until one year from the effective date of the decision to deny the license.

13. **Financial Responsibility Of Applicants.** Applicants for license as horse owner or trainer must submit satisfactory evidence of their financial ability to care for and maintain the horses owned and/or trained by them when such evidence is requested by the Commission.

14. **Physical Examination.** The Commission or the Stewards may require that any jockey be examined at any time, and the Commission or the Stewards may refuse to allow any jockey to ride until he has successfully passed such examination.

15. **Qualifications For Jockey.** No person under 16 years of age shall be granted a jockey's license. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey unless he has satisfactorily worked a horse from the starting gate in company, before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a jockey's license granting permission to such person for the purpose of riding in not more than four races to establish the qualifications and ability of such person for the license. Subsequently, the Stewards may recommend the granting of a jockey's license.

16. **Jockey Agent.** A jockey agent is the authorized representative of a jockey if he is registered with the Stewards and licensed by the Commission as the Jockey's representative. No jockey agent shall represent more than two jockeys at the same time.

17. **Workers' Compensation Act Compliance.** No person may be licensed as a trainer, owner, or in any other capacity in which such person acts as the employer of any other licensee at any authorized race meeting, unless his liability for Workers' Compensation has been secured in accordance with the Workers' Compensation Act of the State of Utah and until evidence of such security for liability is provided the Commission. Should any such required security for liability for Workers' Compensation be canceled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license. If a license applicant certifies that he has no employees that would subject him to liability for Workers' Compensation, he may be licensed, but only for the period he has no employees.

18. **Program Trainer Prohibited.** No licensed trainer, for the purpose of avoiding his responsibilities or insurance requirements as set forth in these Rules, shall place any horse in the care or attendance of any other trainer.

19. **Qualifications For License As Horse Owner.** No person may be licensed as a horse owner who is not the owner of record of a properly registered race horse which he intends to race in Utah and which is in the care of a licensed trainer, or who does not have an interest in such race horse as a part owner or lessee, or who is not the responsible managing owner of a corporation, syndicate or partnership which is the legal owner of such horse.

20. **Horse Ownership By Lease.** Horses may be raced under lease provided a completed Utah Horse Commission, breed registry, approved pari-mutuel or other lease form acceptable to the Commission, is attached to the Registration

Certificate and on file with the Commission. The lessor(s) and lessee must be licensed as horse owners. No lessor shall execute a lease for the purpose of avoiding insurance requirements.

21. **Statements Of Corporation, Partnership, Syndicate Or Other Association Or Entity.** All organizational documents of a corporation, partnership, syndicate or other association or entity, and the relative proportion of ownership interest, the terms of sales with contingencies, arrangements, or leases, shall be filed with the Horsemen's Bookkeeper of the organization and with the Commission. The above-said documents shall declare to whom winnings are payable, in whose names the horses shall be run, and the name of the licensed person who assumes all responsibilities as the owner. The part owner of any horse shall not assign his share or any part of it without the written consent of the other partners, and such consent shall be filed with the Horsemen's Bookkeeper and the Commission. A person or persons conducting racing operations as a corporation, partnership, syndicate or other association or entity shall register the information required by Rules in this Article and pay the required fee(s) for the appropriate entity.

22. **Stable Name Registration.** A person or persons electing to conduct racing operations by use of a stable name shall register the stable name and shall pay the required fee.

A. The applicant must disclose the identity or identities of all persons comprising the stable name.

B. Changes in identities must be reported immediately to and approval obtained from the Commission.

C. No person shall register more than one stable name at the same time nor use his real name for racing purposes so long as he has a registered stable name.

D. Any person who has registered under a stable name may cancel the stable name after he has given written notice to the Commission.

E. A stable name may be changed by registering a new stable name and by paying the required Fee.

F. No person shall register a stable name which has been registered by any other person with any organization conducting a recognized race meeting.

G. A stable name shall be clearly distinguishable from that of another registered stable name.

H. The stable name, and the name of the owner or managing owner, shall be published in the official program. If the stable name consists of more than one person, the official program will list the name of the managing owner along with the phrase "et al."

I. If a partnership, corporation, syndicate, or other association or entity is involved in the identity comprising a stable name, the rules covering a partnership, corporation, syndicate or other association or entity must be complied with and the usual fees paid therefore in addition to the fees for the registration of a stable name.

23. **Ownership Licensing Required.** The ownership licensing procedures required by the Commission must be completed prior to the horse starting in a race and shall include all registrations, statements and payment of fees.

24. **Knowledge Of Rules.** Every licensee, in order to maintain their qualifications for any license held by them, shall be familiar with and knowledgeable of the rules, including all amendments. Every licensee is presumed to know the rules.

25. **Certain Prohibited Licenses.** Commission-licensed jockeys, veterinarians, organizations' security personnel, vendors, and such other licensees designated by the stewards with approval of the Commission, shall not hold any other license. The Commission may refuse to issue a license to a person whose spouse holds a license and which, in the opinion of the Commission, would create a conflict of interest.

R52-7-6. Racing Officials and Commission Racing

Personnel.

1. Racing Officials. The racing officials of a race meeting, unless otherwise ordered by the Commission, are as follows: the stewards, the associate judges, the placing judges, the paddock judge, the patrol judges, the starter, the identifier/tattooer, and the racing secretary. No racing official may serve in that capacity during any race meeting at which is entered a horse owned by them or by a member of their family or in which they have any financial interest. Being the lessee or lessor of a horse shall be construed as having a financial interest.

2. Responsibility To The Commission. The racing officials shall be strictly responsible to the Commission for the performance of their respective duties, and they shall promptly report to the Commission or its stewards any violation of the rules of the Commission coming to their attention or of which they have knowledge. Any racing official who fails to exercise due diligence in the performance of his duties shall be relieved of his duties by the stewards and the matter referred to the Commission.

3. Racing Officials Subject To Approval. Every racing official is subject to prior approval by the Commission before being eligible to act as a racing official at the meeting. At the time of making application for an organization license, the organization shall nominate the racing officials other than the racing officials appointed by the Commission; and after issuance of license to the organization, there shall be no substitution of any racing official except with approval of the stewards or the Commission.

4. Racing Officials Appointed By The Commission. The Commission shall appoint the following racing officials for a race meeting: The board of three stewards and the identifier/tattooer. The Commission may appoint from the approved stewards list one steward to serve as state steward.

5. Racing Personnel Employed By The Commission. The Commission shall employ the services of the licensing person for a race meeting.

6. General Authority Of Stewards. The stewards have general authority and supervision over all licensees and other persons attendant on horses, and also over the enclosures of any recognized meeting. Stewards have the power to interpret the Rules and to decide all questions not specifically covered by them. The stewards shall have the power to determine all questions arising with reference to entries, eligibility and racing; and all entries, declarations and scratches shall be under the supervision of the stewards. The stewards shall be strictly responsible to the Commission for the conduct of the race meeting in every particular.

7. Vacancy Among Racing Officials. Where a vacancy occurs among the racing officials, the stewards shall fill the vacancy immediately. Such appointment is effective until the vacancy is filled in accordance with the rules.

8. Jurisdiction Of Stewards To Suspend Or Fine. The stewards' jurisdiction in any matter commences 72 hours before entries are taken for the first day of racing at the meeting and extends until 30 days after the close of such meeting. In the event a dispute or controversy arises during a race meeting which is not settled within the stewards' thirty-day jurisdiction, then the authority of the stewards may be extended by authority of the Commission for the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission. The stewards may suspend for not more than one year per violation the license of anyone whom they have the authority to supervise; or they may impose a fine not to exceed \$2,500 per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude. All such suspensions, fines, or exclusions shall be reported immediately to the Commission. The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the rules promulgated by the Commission or

the provisions of the Utah Horse Act under the following circumstances:

A. A horse is a confirmed bleeder as determined by the official veterinarian, and the official veterinarian recommends to the stewards that the horse be suspended from participation.

B. A horse is involved with:

i. Any violation of medication laws and rules;

ii. Any suspension or revocation of an occupation license by the stewards or the Commission or any racing jurisdiction recognized by the Commission; or

iii. Any violation of prohibited devices, laws, and rules.

9. Referral To The Commission. The stewards may refer with or without recommendation any matter within their jurisdiction to the Commission.

10. Payment Of Fines. All fines imposed by the stewards or Commission shall be due and payable to the Commission within 72 hours after imposition, except when the imposition of such fine is ordered stayed by the stewards, the Commission, or a court having jurisdiction. However, when a fine and suspension is imposed by the stewards or Commission, the fine shall be due and payable at the time the suspension expires. Nonpayment of the fine when due and payable may result in immediate suspension pending payment of the fine.

11. Stewards' Reports And Records. The stewards shall maintain a record which shall contain a detailed, written account of all questions, disputes, protests, complaints, and objections brought to the attention of the stewards. The stewards shall prepare a daily report concerning their race day activities which shall include fouls and disqualifications, disciplinary hearings, fines and suspensions, conduct of races, interruptions and delays, and condition of racing facility. The stewards shall submit the signed original of their report and record to the Executive Director of the Commission within 72 hours of the race day.

12. Power To Order Examination Of Horse. The stewards shall have the power to have tested, or cause to be examined by a qualified person, any horse entered in a race, which has run in a race, or which is stabled within the enclosure; and may order the examination of any ownership papers, certificates, documents of eligibility, contracts or leases pertaining to any horse.

13. Calling Off Race. When, in the opinion of the stewards, a race(s) cannot be conducted in accordance with the rules of the Commission, they shall cancel and call off such race(s). In the event of mechanical failure or interference during the running of a race which affects the horses in such race, the Stewards may declare the race a "no contest." A race shall be declared "no contest" if no horse covers the course.

14. Substitution Of Jockey Or Trainer.

A. In the event a jockey who is named to ride a mount in a race is unable to fulfill his engagement and is excused by the stewards, the trainer of the horse may select a substitute jockey; or, if no substitute jockey is available, the stewards may scratch the horse from the race. However, the responsibility to provide a jockey for an entered horse remains with the trainer; and the scratching of said horse by the stewards shall not be grounds for the refund of any nomination, sustaining, penalty payments, or entry fees.

B. In the absence of the trainer of the horse, the stewards may place the horse in the temporary care of another trainer of their selection; however, such horse may not be entered or compete in a race without the approval of the owner and the substitute trainer. The substitute trainer must sign the entry card.

15. Stewards' List. The stewards may maintain a stewards' list of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other reason considered a hazard to the safety of the participants.

Such horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

16. **Duties Of The Starter.** The starter shall have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start. The starter shall appoint his assistants; however, he shall not permit his assistants to handle or take charge of any horse in the starting gate without his expressed permission. In the event that organization starter assistants are unavailable to head a horse, the responsibility to provide qualified individuals to head and/or tail a horse in the starting gate shall rest with the trainer. The starter may establish qualification for and maintain a list of such qualified individuals approved by the stewards. No assistant starter or any individual handling a horse at the starting gate shall in any way impede, whether intentionally or otherwise, the start of the race; nor may an assistant starter or other individual, except the jockey handling the horse at the starting gate, apply a whip or other device in an attempt to load any horse in the starting gate. No one other than the jockey shall slap, boot, or otherwise attempt to dispatch a horse from the starting gate.

17. **Starter's List.** The starter may maintain a starter's list of all horses which, in his opinion, are ineligible to be entered in any race because of poor or inconsistent performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter or his representatives that it has been satisfactorily schooled in the gates and can be removed from the starter's list. Such schooling shall be under the direct supervision of the starter or his representatives.

18. **Duties Of The Paddock Judge.** The paddock judge shall supervise the assembling of the horses scheduled to race, the saddling of horses in the paddock, the saddling equipment and changes thereof, the mounting of the jockeys, and their departure for the post. The paddock judge shall provide a report on saddling equipment to the Stewards at their request.

19. **Duties Of Patrol Judges.** The patrol judges, when utilized, shall be subject to the orders of the stewards and shall report to the stewards all facts occurring under their observation during the running of a race.

20. **Duties Of Placing Judges And Timers.** The placing judges, timers, and/or stewards shall occupy the judges' stand at the time the horses pass the finish line; and their duties shall be to hand time, place the horses in the correct order of finish, and report the results. In case of a dead heat or a disagreement as to the correct order of finish, the decision of the stewards shall be final. In placing the horses at the finish, the position of the horses' noses only shall be considered the most forward point of progress.

21. **Duties Of The Clerk Of Scales.** The clerk of scales is responsible for the presence of all jockeys in the jockey's room at the appointed time and to verify that all jockeys have a current Utah jockey's license. The clerk of scales shall verify the correct weight of each jockey at the time of weighing out and when weighing in, and shall report any discrepancies to the stewards immediately. In addition, he or she shall be responsible for the security of the jockey's room and the conduct of the jockeys and their attendants. He or she shall promptly report to the stewards any infraction of the Rules with respect to weight, weighing, riding equipment, or conduct. He or she shall be responsible for accounting of all data required on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day.

22. **Duties Of The Racing Secretary.** The racing secretary shall write and publish conditions of all races and distribute them to horsemen as far in advance of the closing of entries as possible. He or she shall be responsible for the safekeeping of registration certificates and the return of same to the trainers on request or at the conclusion of the race meeting. He or she shall

record winning races on the form supplied by the breed registry, which shall remain attached to or part of the registration certificate. The racing secretary shall be responsible for the taking of entries, checking eligibility, closing of entries, selecting the races to be drawn, conducting the draw, posting the overnight sheet, compiling the official program, and discharging such other duties of their office as required by the rules or as directed by the Stewards.

23. **Duties Of Associate Judge.** An associate judge may perform any of the duties which are performed by any racing official at a meeting, provided such duties are assigned or delegated to them by the Commission or by the stewards presiding at that meeting.

24. **Duties Of The Official Veterinarian.** The official veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. He or she shall recommend to the stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. He or she shall supervise the taking of all specimens for testing according to procedures approved by the Commission. He or she shall provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination. All specimens collected shall be sent in locked and sealed cases to the laboratory. He or she shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. The official veterinarian shall report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting, and the reasons therefore. The official veterinarian may place horses on a veterinarian's list, and may remove from the list those horses which, in their opinion, can satisfactorily compete in a race.

25. **Veterinarian's List.** The official veterinarian may maintain a list of all horses who, in their opinion, are incapable of safely performing in a race and are, therefore, ineligible to be entered or started in a race. Such horse may be removed from the Veterinarian's List when, in the opinion of the official veterinarian, the horse has satisfactorily recovered the capability of performing in a race. The reasons for placing a horse on the veterinarian's list shall include the shedding of blood from one or both nostrils following exercise or the performance in a race and the running of a temperature unnatural to the horse.

26. **Duties Of The Identifier.** The identifier shall identify all horses starting in a race. The identifier shall inspect documents of ownership, eligibility, registration, or breeding as may be necessary to ensure proper identification of each horse eligible to compete at a race meeting provide assistance to the stewards in that regard. The identifier shall immediately report to the paddock judge and the stewards any horse which is not properly identified or any irregularities reflected in the official identification records. The identifier shall report to the stewards and to the Commission on general racing practices observed, and perform such other duties as the Commission may require. The identifier shall report to the racing secretary before the close of the race day business.

R52-7-7. Entries and Declarations.

1. **Control Over Entries And Declarations.** All entries and declarations are under the supervision of the Stewards or their designee; and they, without notice, may refuse the entries any person or the transfer of entries.

2. **Racing Secretary To Establish Conditions.** The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for all races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information

concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of such race shall be changed, amended or altered, nor shall any new condition for such race be imposed.

3. Entries. No horse shall be entered in more than one race on the same day. No person shall enter or attempt to enter a horse for a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if racing conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. Entries shall be in writing on the entry card provided by the organization and must be signed by the trainer or assistant trainer of the horse. Entries made by telephone are valid properly confirmed by the track when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the trainer or his assistant trainer.

4. Determining Eligibility. Determination of a horse's eligibility, penalty or penalties and the right to allowance or allowances for all races shall be from the date of the horse's last race unless the conditions specify otherwise. The trainer is responsible for the eligibility of his horse and to properly enter his horse in condition. In the event the records of the Racing Secretary or the appropriate breed registry do not reflect the horse's most recent starts, the trainer or owner shall accurately provide such information. If a horse is not eligible under the first condition of any race, he cannot be eligible under subsequent conditions. If the conditions specify nonwinners of a certain amount, it means that the horse has not won a race in which the winner's share was the specified amount or more. If the conditions specify nonearners of a stated amount, it means that the horse has not earned that stated amount in any total number of races regardless of the horse's placing.

5. Entries Survive With Transfer. All entries and rights of entry are valid and survive when a horse is sold with his engagements duly transferred. If a partnership agreement is properly filed with the Horsemen's Bookkeeper, subscriptions, entries and rights of entry survive in the remaining partners. Unless written notice to the contrary is filed with the stewards, the entries, rights of entry, and engagements remain with the horse and are transferred therewith to the new owner. No entry or right of entry shall become void on the death of the nominator unless the conditions of the race state otherwise.

6. Horses Ineligible To Start In A Race. In addition to any other valid ground or reason, a horse is ineligible to start any race if:

A. Such horse is not registered by The Jockey Club if a Thoroughbred; the American Quarter Horse Association if a Quarter Horse; the Appaloosa Horse Club if an Appaloosa; the Arabian Horse Club Registry of America if an Arabian; the American Paint Horse Association if a Paint; the Pinto Horse Association of America, Inc., if a Pinto; or any successors to any of the foregoing or other registry recognized by the Commission.

B. The Certificate of Foal Registration, eligibility papers, or other registration issued by the official registry for such horse is not on file with the racing secretary one hour prior to post time for the race in which the horse is scheduled to race.

C. Such horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry.

D. The Win Certificate, Certificate of Foal Registration, eligibility papers or other registration issued by the official registry has been materially altered, erased, removed, or forged.

E. Such horse is ineligible to enter said race, is not duly entered for such race, or remains ineligible to time of starting.

F. The trainer of such horse has not completed the prescribed licensing procedures required by the Commission before entry and the ownership of such horse has not completed the prescribed licensing procedures prior to the horse starting or the horse is in the care of an unlicensed trainer.

G. Such horse is owned in whole or in part or trained by any person who is suspended or ineligible for a license or ineligible to participate under the rules of any Turf Governing Authority or Stud Book Registry.

H. Such horse is a suspended horse.

I. Such horse is on the stewards' list, starter's list, or the veterinarian's list.

J. Except with permission of the stewards and identifier, the identification markings of the horse do not agree with identification as set forth on the registration certificate to the extent that a correction is required from the appropriate breed registry.

K. Except with the permission of the stewards, a horse has not been lip tattooed by a Commission approved tattooer.

L. The entry of a horse is not in the name of his true owner.

M. The horse has drawn into the field or has started in a race on the same day.

N. Its age as determined by an examination of its teeth by the official veterinarian does not correspond to the age shown on its registration certificate, such determination by tooth examination to be made in accordance with the current "Official Guide for Determining the Age of the Horse" as adopted by the American Association of Equine Practitioners.

7. Horses Ineligible To Enter Or Start. Any horse ineligible to be entered for a race or ineligible to start in any race which is entered or competes in such race, may be scratched or disqualified; and the stewards may discipline any person responsible.

8. Registration Certificate To Reflect Correct Ownership. Every certificate of registration, eligibility certificate or lease agreement filed with the organization and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of such horse, and the name of the owner which is printed on the official program for such horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate. A stable name may be registered for such owner or ownership with the Commission. In the event ownership is by syndicate, corporation, partnership or other association or entity, the name of the owner which is printed on the official program for such shall be the responsible managing owner, officer, or partner who assumes all responsibilities as the owner.

9. Alteration Or Forgery Of Certificate Of Registration. No person shall alter or forge any win sheet, certificate of registration, certificate of eligibility, or any other document of ownership or registration, nor willfully forge or alter the signature of any person required on any such document or entry card.

10. Declarations And Scratches. Any trainer or assistant trainer of a horse which has been entered in a race who does not wish such horse to participate in the draw must declare his horse from the race prior to the close of entries. Any trainer or assistant trainer of a horse which has been drawn into or is also eligible for a race who does not wish such horse to start in the race, must scratch his horse from the race prior to the designated scratch time. The declaration or scratch of a horse from a race is irrevocable.

11. Deadline For Arrival Of Entered Horses. All horses scheduled to compete in a race must be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by their deadline may be scratched and the trainer subject to fine and/or suspension.

12. Refund Of Fees. If a horse is declared or scratched from a race, the owner of such horse shall not be entitled to a refund of any nomination, sustaining and penalty payments, entry fees, or organization charges paid or remaining due at the time of the declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the owners of such horses that remain eligible at the time the race is declared off or canceled shall be entitled to a complete refund of all the above payments and fees less monies specified in written race conditions for advertising and promotion.

13. Release Of Certificates. Any certificate of registration or document of ownership filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record of the horse. However, the trainer may authorize in a form provided by the racing secretary the release of the certificate to the owner named on the certificate or his authorized agent. Any disputes concerning the rights to the registration certificates shall be decided by the stewards.

14. Nomination Races. Prior to the closing of nominations, the organization shall file with the Commission a copy of the nomination blank and all advertisements for races to be run during a race meeting. For all races which nominations close no earlier than 72 hours before post time, the organization shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated and which remain eligible. The list shall be distributed within 15 days after the due date of each payment and shall include the horse's name, the owner's name and the total amount of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and deduction for advertising and administrative expenses. The organization shall deposit all monies for a nomination race in an escrow account according to procedures approved by the Commission.

15. Limitations On Field And Number Of Races. No race with less than two horses entered and run, shall be approved by the UHRC. No more than 20 races may be run on a race day, except with permission of the Commission. A race day may be canceled if less than 75 horses have been entered on the day's program, with the exception of days on which trials or finals for a nomination race are scheduled.

16. Agreement Upon Entry. No entry shall be accepted in any race except upon the condition that all disputes, claims, and objections arising out of the racing or with respect to the interpretation of Commission and track rules or conditions of any race shall be decided by the Board of Stewards at the race meet; or, upon appeal, decided by the Commission.

17. Selection Of Entered Horses. The manner of selecting post positions of horses shall be determined by the stewards. The selection shall be by lot and shall be made by one of the stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one race, the race may be split; or four horses not drawing into the field may be placed on an also eligible list.

18. Preferred List Of Horses. The racing secretary may maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the Racing Secretary. Such rules must be submitted to the Commission 30 days prior to the commencement of the meet and are subject to approval by the Commission.

R52-7-8. Veterinarian Practices, Medication and Testing Procedures.

1. Veterinary Practices - Treatment Restricted. Within the

time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race which are outside of the approved drug threshold levels set forth by California Horse Racing Board (CHRB) Rule No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h)(2),(e)(9) and (f) exempted, hereby incorporated by reference, shall result in disqualification by the Stewards. Accordingly clenbuterol will be treated the same as all other drugs that are not specifically authorized. If the testing laboratory detects clenbuterol or its metabolites or analogs under the laboratory's standard operating procedures, the finding will be reported as a violation. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. Racing Soundness Examination. Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. Positive Lab Reports. A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the

report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. Intent Of Medication Rules. It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. Power To Have Tested. As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. Pre-Race Testing. The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. Equipment For Official Testing. Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. Taking Of Samples. Blood, urine, saliva or other samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of 30 minutes after entry into the test barn before a sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. Laboratories Approved By The Commission. Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his

horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R52-7-8-4 and R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. Facilitating The Taking Of Urine Samples. When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. Postmortem Examination. Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

R52-7-9. Running the Race.

1. Jockeys To Report. Every jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the jockey room until all of their riding engagements have been fulfilled and/or unless excused by the stewards.

2. Entrance To Jockey Room Prohibited. Except with permission of the stewards or the Commission, no person shall be permitted entrance into the jockey room from one hour before post time for the first race until after the last race other than jockeys, their attendants, racing officials and security officers on duty, and organization employees performing required duties.

3. Weighing Out. All jockeys taking part in a race must be weighed out by the Clerk of Scales no more than one hour preceding the time designated for the race. Any overweight in excess of one pound shall be declared by the jockey to the Clerk

of Scales, who shall report such overweight and any change in jockeys to the Stewards for immediate public announcement. A jockey's weight includes the riding costume, racing saddle and pad; but shall not include the jockey's safety helmet, whip, the horse's bridle or other regularly approved racing tack. A jockey must be neat in appearance and must wear a conventional riding costume.

4. Unruly Horses In The Paddock. If a horse is so unruly in the saddling paddock that the identifier cannot read the tattoo number and properly identify the horse; or if the trainer or their assistant is uncooperative in the effort to identify the horse, then the horse may be scratched by order of the stewards.

5. Use Of Equipment. No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound or be more than 31 inches in length. No whip shall be used unless it shall have affixed to the end thereof a leather "popper." All whips are subject to inspection and approval by the stewards. Blinkers are not to be placed on the horse until after the horse has been identified by the official identifier, except with permission of the stewards.

6. Prohibited Use Of Equipment. Jockeys are prohibited from whipping a horse excessively, brutally, or upon the head, except when necessary to control the horse. No mechanical or electrical devices or appliances other than the ordinary whip shall be possessed by any individual or used on any horse at any time a race meeting, whether in a race or otherwise.

7. Responsibility For Weight. The jockey, trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

8. Safety Equipment Required. All persons, when mounted on a race horse within the enclosure or riding in a race, shall wear a properly fastened safety helmet and flak jacket. The Commission or the stewards may require any other person to wear such helmet and jacket when mounted on a horse within the enclosure. All safety helmets and flak jackets so required are subject to approval of the stewards or Commission.

9. Display Of Colors And Post Position Numbers. In a race, each horse shall carry a conspicuous saddle cloth number and a head number, and the jockey shall wear colors and a numbered helmet cover corresponding to the number of the horse which are furnished by the organization licensee.

10. Deposit Of Jockey Fee. The minimum jockey mount fee for a losing mount in the race must be on deposit with the horsemen's bookkeeper, prior to the time for weighing out, and failure to have such minimum fee on deposit is cause for disciplinary action and cause for the stewards to scratch the horse for which such fee is to be deposited. The organization assumes the obligation to pay the jockey fee when earned by the engaged jockey. The jockey fee shall be considered earned when the jockey is weighed out by the clerk of scales, unless, in the opinion of the stewards, such jockey capable of riding elect to take themselves off the mount without proper cause.

11. Requirements For Horse, Trainer, And Jockey. Every horse must be in the paddock at the time appointed by the stewards before post time for their race. Every horse must be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give such instructions as may be necessary to assure the best performance of the horse. Every jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

12. Failure To Fulfill Jockey Engagements. No jockey engaged for a certain race or for a specified time may fail or refuse to abide by his or her agreement unless excused by the

stewards.

13. Control And Parade Of Horses On The Track. The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. All horses with jockey mounted shall parade and warm up carrying their weight and wearing their equipment from the paddock to the starting gate, as well as to the finish line. Any horse failing to do so may be scratched by the stewards. After passing the stands at least once, the horses may break formation and warm up until directed to proceed to the starting gate. In the event a jockey is injured during the parade to post or at the starting gate and must be replaced, the horse shall be returned to the paddock and resaddled with the replacement jockey's equipment. Such horse must carry the replacement jockey to the starting gate.

14. Start Of The Race. When the horses have reached the starting gate, they shall be placed in their starting gate stalls in the order stipulated by the starter. Except in cases of emergency, every horse shall be started by the starter from a starting gate approved by the Commission. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards. If, when the starter dispatches the field, the doors at the front of the starting gate stall should not open properly due to a mechanical failure of malfunction of the starting gate, the stewards may declare such horse to be a nonstarter. Should a horse which is not previously scratched not be in the starting gate stall thereby causing such horse to be left when the field is dispatched by the starter, such horse shall be declared a nonstarter by the stewards.

15. Leaving The Race Course. Should a horse leave the course while moving from the paddock to starting gate, he shall return to the course at the nearest practical point to that at which he left the course, and shall complete his parade to the starting gate from the point at which he left the course. However, should such horse leave the course to the extent that he is out of the direct line of sight of the stewards, or if such horse cannot be returned to the course within a reasonable amount of time, the stewards shall scratch the horse. Any horse which leaves the course or loses its jockey during the running of a race shall be disqualified and may be placed last, or the horse may be unplaced.

16. Riding Rules. In a straightaway race, every horse must maintain position as nearly as possible in the lane in which he starts. If a horse is ridden, drifts, or swerves out of their lane in such a manner that he interferes with or impedes another horse, it is a foul. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged; and if in the opinion of the stewards a foul is committed as a result of a jockey not making his best effort to control and guide their mount to avoid a foul, whether intentionally or through carelessness or incompetence, such jockey may be penalized at the discretion of the stewards.

17. Stewards To Determine Fouls And Extent Of Disqualification. The stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind such other horses as in their judgment it interfered with, or they may place it last. The stewards may determine that a horse shall be unplaced.

18. Careless Riding. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified and/or the jockey may be fined and/or suspended, or otherwise disciplined.

19. Ramifications Of A Disqualification. When a horse is

disqualified by the stewards, every horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

20. **Dead Heat.** When a race results in a dead heat, the heat shall not be run off. The purse distribution due the horses involved in the dead heat shall be divided equally between them. All prizes or trophies for which a duplicate is not awardable shall be drawn for by lot.

21. **Returning To The Finish After The Race.** After the race, the jockey shall return their horse to the finish and before dismounting, salute the stewards. No person shall assist a jockey in removing from their horse the equipment that is to be included in the jockey's weight except by permission of the stewards. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his weight.

22. **Objection - Inquiry Concerning Interference.** Before the race has been declared official, a jockey, trainer or their assistant trainer, owner or their authorized agent of the horse, who has reasonable grounds to believe that their horse was interfered with or impeded or otherwise hindered during the running of a race, or that any riding rule was violated by any jockey or horse during the running of the race, may immediately make a claim of interference or foul with the stewards or their delegate. The stewards shall thereupon hold an inquiry into the running of the race; however, the stewards may upon their own motion conduct an inquiry into the running of a race. Any claim of foul, objection, and/or inquiry shall be immediately announced to the public.

23. **Official Order Of Finish.** When satisfied that the order of finish is correct, that all jockeys unless excused have been properly weighed in, and that the race has been properly run in accordance with the rules of the Commission, the Stewards shall declare that the order of finish is official; and it shall be announced to the public, confirmed, and the official order of finish posted for the race.

24. **Time Trial Qualifiers.** When two or more time trial contestants have the same qualifying time, to a degree of .001 of a second, or more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for all contestants, then a draw by lot will be conducted in accordance with Subsection R52-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant which out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

R52-7-10. Objections and Protests; Hearing and Appeals.

1. **Stewards To Make Inquiry Or Investigation.** The stewards shall make diligent inquiry or investigation into any complaint, objection or protest made either upon their own motion, by any Racing Official, or by any other person empowered by this Article to make such complaint, protest or objection.

2. **Objections.** Objections to the participation of a horse entered in any race shall be made to the stewards in writing and signed by the objector. Except for claim of foul or interference, an objection to a horse entered in a race shall be made not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered. Any such objection shall set forth the specific reason or grounds for the

objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter. An objection concerning claim of foul in a race may be lodged verbally to the stewards before the race results are declared official.

3. **Grounds For Objections.** An objection to a horse which is entered in a race shall be made on the following grounds or reasons:

A. A misstatement, error or omission in the entry under which a horse is to run.

B. That the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given.

C. That the horse is not qualified to enter under the conditions specified for the race, or that the allowances are improperly claimed or not entitled the horse, or that the weight to be carried is incorrect under the conditions of the race.

D. That the horse is owned in whole or in part, or leased by a person ineligible to participate in racing or otherwise ineligible to run a race as provided in these Rules.

E. That reasonable grounds exist whereby a horse was interfered with or impeded or otherwise hindered by another horse or jockey during the running of a race.

4. **Horse Subject To Objection.** The stewards may scratch from the race any horse which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

5. **Protests.** A protest against any horse which has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R52-7-10(8). Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

6. **Grounds For Protest.** A protest may be made upon the following grounds:

A. Any ground for objection set forth in R52-1-10(3).

B. That the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers designated to the horses which started in the race.

C. That a jockey, trainer or owner of a horse which started in the race was ineligible to participate in racing as provided in these rules.

D. That the weight carried by a horse was improper by reason of fraud or willful misconduct.

E. That an unfair advantage was gained in violation of the rules.

7. **Persons Empowered To File Objection Or Protest.** A jockey, trainer, owner or authorized agent of the horse which is entered or is a starter in a race is empowered to file an objection or protest against any other horse in such race upon the grounds set forth in this Article for objections and protests.

8. **No Limitation On Time To File When Fraud Alleged.** Notwithstanding any other provision in this Article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged, provided that the stewards are satisfied that the allegations are bona fide and susceptible to verification.

9. **Frivolous Or Inaccurate Objection Or Protest.** No person shall knowingly file a frivolous, inaccurate, false, or untruthful objection or protest; nor shall any person present his objection or protest to the stewards in a disrespectful or undignified manner.

10. **Horse To Be Disqualified On Valid Protest.** If a protest against a horse which has run in a race is declared valid, that horse may be disqualified. A horse so disqualified which was a starter in the said race, may be placed last in the order of finish or may be unplaced. The stewards or the Commission may order any purse, award or prize for any race withheld from

distribution pending the determination of the protest(s). In the event any purse, award or prize has been distributed to a person on behalf of a horse which by protest or other reason is disqualified or determined not to be entitled to such purse, award or prize, the stewards or the Commission may order such purse, award or prize returned and redistributed to the rightful person. Any person who fails to comply with an order to return any purse, award or prize previously distributed shall be suspended until its return.

11. Notification Of And Representation At Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R52-7-3(6). Every person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on his behalf and to cross-examine other witnesses at the hearing.

12. Testimony And Evidence At Hearing. Every person called to a hearing before the stewards for a rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.

13. Duty Of Disclosure. It is the duty and obligation of every licensee to make full disclosure at a hearing before the Commission or before the stewards of any knowledge he or she possesses of a violation of any racing law or of the rules of the Commission. No person may refuse to testify at any hearing on any relevant matter except in the proper exercise of a legal privilege, nor shall any person testify falsely.

14. Failure To Appear. Any licensee or summoned person who fails to appear before the stewards or the Commission after they have been ordered personally or in writing to do so, may be suspended pending appearance before the stewards or the Commission. Nonappearance of a summoned person after adequate notice may be construed as a waiver of right to be present at a hearing.

15. Record Of Hearing. All hearings before the stewards or Commission shall be recorded. That portion at a hearing constituting deliberations in executive session need not be recorded. A written transcript or a copy of the tape recording shall be made available to any person alleged to have committed a violation of the Act or the rules upon written request and payment of appropriate reimbursement cost(s) for transcription or reproduction.

16. Vote On Steward's Decision. A majority vote shall decide any question to which the authority of the stewards extends. If a vote is not unanimous, the dissent steward shall provide a written record to the Commission of the reasons for such dissent within 72 hours of the vote.

17. Rulings By The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent address on file with the Commission; date of birth; social security number; statement of the offense charged including any rule number; date of ruling; fine and/or suspension imposed or other action taken; changes in the order of finish and purse distribution in a race, when appropriate; and any other information deemed necessary by the stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other stewards, issue an Order or Notice signed by one steward on behalf of the Board of Stewards. Subsequently, an Order containing all three stewards' signatures shall be made part of the official record.

18. Summary Suspension Of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as

provided in Subsection R52-7-10(19).

19. Duration Of Suspension Or Revocation. Unless execution of an order of suspension or revocation is stayed by the Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R52-7-5.

20. Grounds For Appeal From Decision Of The Stewards. Any decision of the stewards, except decisions regarding disqualifications for interference during the running of a race, may be appealed to the Commission; and such decision may be overruled if it is found by a preponderance of evidence that:

A. The stewards mistakenly interpreted the law; or

B. The Appellant produces new evidence of a convincing nature which, if found to be true, would require the overruling of the decision; or

C. The best interests of racing and the State may be better served.

21. Appeal From Decision Of The Stewards. The Commission shall review hearings of any case referred to the Commission by the stewards or appealed to the Commission from the decisions of the stewards except as otherwise provided in this Article. Upon every appealable decision of the stewards, the person subject to the decision or Order shall be made aware of his right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 72 hours or the third calendar day from the date of the rendering of the decision of the stewards unless the Commission for good cause extends the time for filing not to exceed 30 days from said rendering date. The appeal shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; and shall set forth the facts and any new evidence the appellant believes to be grounds for an appeal before the Commission. Action on such a hearing request must commence by the Commission within 30 days of the filing of the appeal. An appeal shall not affect a decision of the stewards until the appeal has been sustained or dismissed or a stay order issued.

22. Appointment Of Hearing Examiners. When directed by the Commission, any qualified person(s) may sit as a hearing examiner(s) for the taking of evidence in any matter pending before the Commission. Any such hearing examiner shall report to the Commission Findings of Fact and Conclusions of Law, and the Commission shall determine the matter as if such evidence had been presented to the full Commission.

23. Hearings On Agreement. Persons aggrieved as of the result of a stewards' ruling in a preliminary or trial race may request a hearing before the executive director of the Commission to review same. If all interested parties waive the right to receive ten day notice of hearing, such a hearing may be heard on a day certain within seven days after the preliminary or trial race in question. All such appeals shall be heard on days set by the executive director of the Commission or anyone acting in his stead.

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the Commission as specified in Subsection R52-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further order of the executive director upon consultation with and the

direction of a minimum of three Commissioners.

25. Appearance At Hearing Upon Appeal. The Commission shall notify the Appellant and the stewards of the date, time and location of its hearing in the matter upon appeal. The burden shall be on the appellant to provide the facts necessary to sustain the appeal.

26. Complaints Against Officials. Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. Complaints against any stewards shall be made in writing to the executive director of the Commission and signed by the complainant.

27. Rulings On Admissibility And Evidence. In all hearings, the chairperson, chief steward or such other person as may be designated, shall make rulings on admissibility and introduction of evidence. Such a ruling shall prevail; except when a Commission member or a steward requests a poll of the panel, and the ruling overturned by majority vote.

R52-7-11. General Conduct.

1. Conditions Of Meeting Binding Upon Licensees. The Commission, recognizing the necessity for an organization to comply with the requirements of its license and to fulfill its obligation to the public and the State of Utah with the best possible uninterrupted services in the comparatively short licensed period, herein provides that all organizations, officials, horsemen, owners, trainers, jockeys, grooms, farriers, organization employees, and all licensees who have accepted directly or indirectly, with reasonable advance notice, the conditions defined by these rules under which said organization engages and plans to conduct such race meeting, shall be bound thereby.

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the trainer or person or persons under his supervision having care or custody of such horse. At the discretion of the stewards or Commission, the trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the official veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

3. Altering Sex Of Horse. Any alteration to the sex of a horse from the sex as recorded on the Certificate of Foal Registration or other official registration Certificate of such horse shall be immediately reported by the trainer to the racing

secretary and the official horse identifier if such horse is registered to race at any race meeting.

4. Official Workouts And Schooling Races. No trainer shall permit a horse in his charge to be taken on to the track for training or a workout except during hours designated by the organization. A trainer desiring to engage a horse in a workout or schooling race shall, prior to such workout or race, identify the horse by registered name and tattoo number when requested to do so by the stewards or their authorized representative.

5. Intoxication. No licensee, employee of the organization or its concessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any controlled dangerous substance, or under the influence of any narcotic or other drug while within the enclosure. No person shall in any manner or at any time disturb the peace or make themselves obnoxious on the enclosure of an organization.

6. Firearms. No person shall possess any firearm within the enclosure unless he is a fully qualified peace officer as defined in the laws of the State of Utah, or is acting in accordance with Title 53, Chapter 5, Part 7, Concealed Weapons Act and Title 76, chapter 10, Part 5, Utah Code. A person carrying a concealed weapon may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

7. Financial Responsibility. No licensee shall willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with his operations as a licensee; nor shall he falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. A commission authorized license may be suspended pending settlement of the financial obligation. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

8. Checks. No licensee shall write, issue, make or present a bad check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies. The fact that such check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

9. Gratuity To Starter Or Assistant Starter. No person shall offer or give money or other gratuity to any starter or assistant starter, nor shall any starter or assistant starter receive money or other compensation, gratuity or reward, in connection with the running of any race or races except compensation received from an organization for official duties.

10. Possession Of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R52-7-8(1). No person shall have in his or her possession within the enclosure during any recognized meeting any device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

11. Bribes. No person shall give, or offer or promise to give, or attempt to give or offer any money, bribe or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding or agreement that such owner, trainer, jockey, agent or other person shall not use his best efforts to win a race or so conduct himself in such race that any

other participant in such race shall be assisted or enabled to win such race; nor shall any trainer, jockey, owner, agent or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe or thing of value with the intention, understanding or agreement that he will not use his best efforts to win a race or to so conduct himself that any other horse or horses entered in such race shall thereby be assisted or enabled to win such race.

12. **Trainer's Duty To Ensure Licensed Participation.** No trainer shall have in his custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse owner by the Commission unless such owner has filed an application for license as a horse owner with the Commission and the same is pending before the Commission; nor shall any trainer have in his employ within the enclosure any groom, stable employee, stable agent, or other person required to be licensed, unless such person has a valid license. All changes of commissioned licensed personnel shall be reported immediately to the Commission.

13. **Conduct Detrimental To Horse Racing.** No licensee shall engage in any conduct prohibited by law and by the rules of the Commission, nor shall any licensee engage in any conduct which by its nature is unsportsmanlike or detrimental to the best interest of horse racing.

14. **Denial Of Access To Private Property.** Nothing contained in these rules shall be deemed, expressly or implicitly, to prevent an organization from exercising the right to deny access to or to remove any person from the organization's premises or property for just cause.

15. **Tricks/Schemes.** No person shall falsify, conceal, or cover up by trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying selling, or racing of such animal.

16. **Prearranging The Outcome Of A Race.** No licensed or unlicensed person may attempt or conspire to prearrange the outcome of a race.

R52-7-12. Fire Prevention and Security.

1. **Security Control.** Every organization conducting a race meeting shall maintain security controls over its premises, and such security controls are subject to the approval of the Commission.

2. **Identification Required.** No person shall be admitted to a restricted area within the enclosure without a license, visitor's pass, or other identification issued by the Commission or the organization on his person. Whenever deemed advisable, the stewards or the organization may require the visible display of the identification as a badge. No person shall use the license or credential issued to another, nor shall any person give or loan his license or credential to any other person.

3. **Organization Credentials.** The racing organization shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its meeting are licensed as required by this Article; provided, however, that no such system or methods may exclude any investigator or employee of the Commission or any peace officer when on duty; nor shall any person be excluded solely on the basis of sex, color, creed, or national origin or ancestry.

4. **Organization To Prevent Unauthorized Access To Restricted Areas.** Unless granted exemption by the Commission, every organization shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such

restricted area is unauthorized. Nothing herein shall be construed to exclude members of the Commission and any staff members of the Commission in the conduct of official duties.

5. **Examination Of Personal Effects.** The Commission, its authorized officers or agents may enter the stables, rooms, or other places within the premises of a recognized meeting to inspect and examine the personal effects and property of any licensee or other person in or about or permitted access to any restricted area; and each licensee in accepting his license, and each person entering such restricted area does thereby consent thereto.

6. **Obedience To Security Officers And Public Safety Officers.** No licensee shall willfully ignore or refuse to obey any order issued by the stewards; the Commission; or any security officer of the organization; or any public officer of any police, fire or law enforcement agency when such order is issued or given in the performance of duty for the purpose of controlling any hazardous situation or occurrence. No person shall interfere with public safety officers, security officers or any racing official in the performance of their duties.

R52-7-13. Drugs and Medication Exceptions and Illegal Practices.

1. **Horses Tested.** The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. **Trainer Present at Testing.** The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and the matter shall be referred to the Commission for such further penalty as may be determined.

3. **Specimens Delivered to Laboratory.** All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. **Medication.** The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. **The Only Non-Steroidal Anti-Inflammatory Drug Permitted.** Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled to race.

6. **Phenylbutazone Levels Permitted and Penalty.** No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma. On a first violation period at phenylbutazone concentrations

above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$250.00; at concentrations above 10 ug/ml plasma: a fine of up to \$500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$500.00; at concentrations above 10 ug/ml plasma: a fine of up to \$1,000.00.

On a third or subsequent violation within a 12-month period: a fine of \$1,000.00, a suspension of 30 days, and loss of purse.

7. Administered under Direction of Commission Licensed Veterinarian. Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. List Provided. Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards.

9. Lasix Treatment. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. Bleeders Listing. To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. License Required. In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a Commission licensed veterinarian, using dosages pursuant to CHR Rule No. 1845, section (e), (Effective 5/27/05), Authorized Bleeder Medication, which is hereby incorporated by reference. The bleeder medication is administered by the trainers veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of the levels set forth in CHR Rule No. 1845, sections (b)-(c), (Effective 5/27/05), Authorized Bleeder Medication, hereby incorporated by reference, will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations.

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facia evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. Horses Designated. The horses' trainer or designated

agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. Bleeder Disqualification. Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. Disqualification of Owner or Trainer. A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. Hypodermic Instruments Prohibited. Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. Search Provisions. Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. Daily Medication Reports. All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

- A. Name, age, sex and breed of the horse.
- B. The permitted drug used (Bute or Lasix).
- C. The time administered.
- D. The route of the administration.

E. The report must be dated and signed by the veterinarian so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. Prima Facia Evidence. If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facia evidence that the horse has been illegally medicated.

22. Trainer Responsibility. Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

KEY: horses
December 11, 2013
Notice of Continuation August 30, 2011

4-38-4

R70. Agriculture and Food, Regulatory Services.**R70-630. Water Vending Machine.****R70-630-1. Authority.**

Promulgated under authority of Title 4, Chapter 5.

R70-630-2. Purpose.

The purpose of these rules is to set forth requirements and controls for vending machines designed to dispense water intended for human consumption to assure:

(1) Consumers using such machines are given appropriate information as to the nature of the vended water;

(2) The quality of the water vended meets acceptable standards for potability; and

(3) The vending equipment is installed, operated, and maintained to protect the health, safety, and welfare of the consuming public.

R70-630-3. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(1) "Approved" means a water vending machine, drinking water source, backflow prevention device or other devices or services that meets the minimum standards of this rule. Approved does not imply satisfactory performance for a specific period of time. Approval, when required, shall be in writing based upon departmental review of data submitted by the water vending industry, manufacturers, operators, owners or managers.

(2) "Approved material" means materials approved by the department as being free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor, radiological, microbial, or chemical quality of the water.

(3) "Department" means the Department of Agriculture and Food, Division of Regulatory Services, or its representative.

(4) "Nontoxic" means free of substances which may render the water injurious to health or may adversely affect the flavor, color, odor, chemical or microbial quality of the water.

(5) "Person" means any individual, partnership, firm, company, corporation, trustee, association, public body, or private entity engaged in the water vending business.

(6) "Potable water" means water satisfactory for drinking, culinary, and domestic purposes, meeting the quality standards of rule R309-103, under the Department of Environmental Quality, the Division of Drinking Water.

(7) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method of equal effectiveness that meets the requirements for purified water as described in the 21st Edition of the United States Pharmacopoeia issued by Mack Publishing, Easton, Penn. 18042.

(8) "Sanitize" means the effective bactericidal treatment of clean surfaces of equipment, utensils, and containers by a process that provides enough accumulative heat or concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level.

(9) "Sanitizing solution" means Aqueous solutions described by 21 CFR 178.1010, 2004, for the purpose of sanitizing food or water contact surfaces.

(10) "Vended water" means water that is dispensed by a water vending machine or retail water facility for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. Vended water does not include water from a public water system which has not undergone additional treatment as indicated in R70-630-5(4).

(11) "Vending machine" means any self-service device which upon insertion of a coin, coins, paper currency, token, card, or receipt of payment by other means dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending

operation.

(12) "Water vending machine" means a vending machine connected to water designed to dispense drinking water, purified and/or other water products. Such machines shall be designed to reduce or remove turbidity, off-taste, odors, to provide disinfectant treatment, and may include processes for dissolved solid reduction or removal.

(13) "Water vending machine operator" means any person who owns, leases, manages, or is otherwise responsible for the operation of a water vending machine.

R70-630-4. Location and Operation.

(1) Each water vending machine shall be located indoors or otherwise protected against tampering and vandalism, and shall be located in an area that can be maintained in a clean condition, and in a manner that avoids insect and rodent harborage.

(2) The floor on which a water vending machine is located shall be smooth and of cleanable construction.

(3) Each water vending machine system shall have an adequate system for collecting and disposing drippage, spillage, and overflow of water to prevent creation of a nuisance.

(a) Where process waste water is collected within the processing unit for pumping or gravity flow to an outside drain, the waste water drain line shall terminate at least two inches above the top rim of the retention vessel within said unit.

(b) The waste line from the water vending machine to an approved drainage system shall be air-gapped.

(c) Containers or drip pans used for the storage or collection of liquid wastes within a vending machine shall be leakproof, readily removable, easily cleanable, and corrosion resistant. In water vending machines which utilize the bottom of the cabinet interior as an internal sump, the sump shall be readily accessible and corrosion resistant. The waste disposal holding tank shall be maintained in a clean and sanitary manner.

(4) Each machine shall have a backflow prevention device for all connections with the water supply source which meets requirements of The International Plumbing Code and its amendment as adopted by the State of Utah Building Codes Commission and shall have no cross connections between the drain and potable water.

(5) Each person who establishes, maintains, or operates any water vending machine in the state, shall first secure a Water Vending Machine Operating Registration issued under Section 4-5-9. The Registration shall be renewed annually.

(6) Application for Registration shall be made in writing and include the location of each water vending machine, the source of the water to be vended, the treatment that the water will receive prior to being vended, and the name of the manufacturer and the model number of each machine.

(7) The source of the water supply shall be an approved public water system as defined under the Department of Environmental Quality, Division of Drinking Water. Upon application for an initial operating Registration, the operator shall submit information which indicates the product being dispensed into the container meets all finished product quality standards applicable to drinking water. When indicated by reason of complaint or illness, the department may require that additional analyses be performed on the source or products of water vending machines.

(8) Each water vending machine shall be maintained in a clean and sanitary condition, free from dust, dirt, and vermin.

(9) Labels or advertisements located on or near water vending machines shall not imply nor describe the vended water as "spring water."

(10) Water vending machine labels or advertisements shall not describe or use other words to imply, on the machine or elsewhere, the water as being "purified water" unless such water conforms to the definition contained in this rule.

(11) Water vending machine labels or advertisements shall not describe, on the machine or elsewhere, the water as having medicinal or health giving properties.

(12) Each water vending machine shall have in a position clearly visible to customers the following information:

- (a) Name and address of the operator.
- (b) Name of the water supply purveyor.
- (c) The method of treatment that is utilized.
- (d) The method of post-disinfection that is utilized.

(e) A local or toll free number that may be called for further information, problems, or complaints; or the name of the store or building manager can be listed when the machine is located within a business establishment and the establishment manager is responsible for the operation of the machine.

R70-630-5. Construction Requirements.

(1) Water vending machines shall comply with the construction and performance standards of the National Sanitation Foundation or National Automatic Merchandising Association. A list of acceptable third party certification groups is available from 8:00 to 5:00 p.m. at the Utah Department of Agriculture and Food. Water vending machines shall be designed and constructed to permit easy cleaning and maintenance of all exterior and interior surfaces and component parts.

(2) Water contact surfaces and parts of the water vending machine shall be of non-toxic, corrosion-resistant, non-absorbent material capable of withstanding repeated cleaning and sanitizing treatment.

(3) Water vending machines shall have a guarded or recessed spout.

(4) Owners, managers, and operators of water vending machines shall ensure that the methods used for treatment of vended water are acceptable to the department. Such acceptable treatment includes distillation, ion-exchange, filtration, ultra-violet light, mineral addition, and reverse osmosis.

(5) Water vending machines shall be equipped to disinfect the vended water by ultra-violet light, ozone, or equally effective methods prior to delivery into the customer's container.

(6) Water vending machines shall be equipped with monitoring devices designed to shut down operation of the machine when the treatment or disinfectant unit fails to properly function.

(7) Water vending machines shall be equipped with a self-closing, tight-fitting door on the vending compartment if the machine is not located in an enclosed building.

(8) Granular activated carbon, if used in the treatment process of vended water, shall comply with the specifications provided by the American Water Works Association for that substance (Standard B604-90).

R70-630-6. Operator Requirements.

(1) Water vending machine operators shall have on file and perform a maintenance program that includes:

(a) Visits for cleaning, sanitizing, and servicing of machines at least every two weeks.

(b) Written servicing instructions.

(c) Technical manuals for the machines.

(d) Technical manuals for the water treatment appurtenances involved.

(2) Parts and surfaces of water vending machines shall be kept clean and maintained by the water vending machine operator. The vending chamber and the vending nozzle shall be cleaned and sanitized each time the machine is serviced. A record of cleaning and maintenance operations shall be kept by the operator for each water vending machine. These records shall be made available to the department's employees upon request.

(3) Water vending machine operators shall ensure that

machines are maintained and monitored to dispense water meeting quality standards specified in this rule. Water analysis shall be performed using approved testing procedures set forth in 21 CFR 165, 2004. Each machine's finished product shall be sampled at least once every three months by the operator, to determine total coliform content. However, provided a satisfactory method of post-treatment disinfection is utilized and based on a sustained record of satisfactory total coliform analyses, the department shall allow modification of the three-month sampling requirement as follows:

(a) When three consecutive three-month samples are each found to contain zero coliform colonies per 100 milliliters of the vended water, microbiological sampling intervals shall be extended to a period not exceeding six months. Should a subsequent six-month sample test positive for total coliform, the required sampling frequency shall revert to the three-month frequency until three consecutive samples again test negative for total coliform bacteria.

(b) If any sample collected from a machine is determined to be unsatisfactory, exceeding the zero coliform colonies per 100 milliliter, the machine shall be cleaned, sanitized and resampled immediately. If, after being cleaned and sanitized, the vended product is determined to be positive for coliform, the machine shall be taken out of service until the source of contamination has been located and corrected.

(4) Each water vending machine operator shall take whatever investigative or corrective actions are necessary to assure a potable water is supplied to consumers.

(5) The vended water from each vending machine utilizing silver-impregnated carbon filters in the treatment process shall be sampled once every six months for silver.

(6) All records pertaining to the sampling and analyses shall be retained by the operator for a period of not less than two years. Results of all analyses shall be available for department review upon request.

R70-630-7. Duties and Responsibilities of the Department.

(1) The department may collect and analyze samples of vended water when necessary to determine if the vended water meets the standards of potable water.

(2) After considering the source of water and the treatment process provided by the water vending machine, the department shall determine whether the finished product water will or will not meet quality standards as provided under rule R309-103 under the Division of Drinking Water. If it is determined that the water will not meet potable water standards, the Registration to operate a water vending machine shall be denied.

(3) The department will evaluate water vending machines, as well as their locations and support facilities, as often as may be deemed necessary for enforcement of the provisions of this rule.

(4) Water vending machine operators shall allow the department to examine necessary records pertaining to the operation and maintenance of the vending machines and also provide access to the machines for inspection at reasonable hours.

R70-630-8. Enforcement and Penalties.

(1) The department shall order a water vending machine operator to discontinue the operation of any water vending machine that represents a threat to the life or health of any person, or whose finished water does not meet the minimum standards provided for in this rule. Such water vending machine shall not be returned to use until such time the department determines that the conditions which caused the discontinuance of operation no longer exist.

(2) The department shall deny a Registration (procedures for Registration denial are stated in R51-2) when it is determined that there has been a substantial failure to comply

with the provisions of this rule by which the health or life of the consumers is threatened or impaired, or by which or through which, directly or indirectly, disease is caused. Registration can also be denied or suspended if the water has been adulterated.

R70-630-9. Preemption of Authority to Regulate.

The regulation of water vending machines is hereby preempted by the state. No county or municipality may adopt or enforce any ordinance which regulates the licensure or operation of water vending machines, unless the local health department authority in consultation with and approval of UDAF, determine that unique conditions exist within the county which make it more appropriate for the county to regulate the water vending machines in order to protect the health or welfare of the public.

KEY: food inspection

September 8, 2004

Notice of Continuation December 19, 2013

4-5

R156. Commerce, Occupational and Professional Licensing.**R156-17b. Pharmacy Practice Act Rule.****R156-17b-101. Title.**

This rule is known as the "Pharmacy Practice Act Rule".

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.

(6) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.

(7) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(8) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(9) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(10) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(11) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(12) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a

daily or weekly drug container to facilitate the patient taking the correct medication.

(13) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

(14) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(15) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(16) "Drugs", as used in this rule, means drugs or devices.

(17) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

(18) "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

(19) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

(20) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(21) "FDA" means the United States Food and Drug Administration and any successor agency.

(22) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(23) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(24) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with

the order of a practitioner by an employee or agent of the facility.

(25) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(26) "Maintenance medications" means medications the patient takes on an ongoing basis.

(27) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(28) "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

(29) "MPJE" means the Multistate Jurisprudence Examination.

(30) "NABP" means the National Association of Boards of Pharmacy.

(31) "NAPLEX" means North American Pharmacy Licensing Examination.

(32) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (14), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(33) "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

(34) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(35) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(36) "PIC", as used in this rule, means the pharmacist-in-charge.

(37) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(38) "PTCB" means the Pharmacy Technician Certification Board.

(39) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(40) "Refill" means to fill again.

(41) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(42) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(43) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(44) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(45) "Supervisor" means a licensed pharmacist in good standing with the Division.

(46) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(47) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(48) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

(49) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(50) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 36-NF 31), 2013 edition, which is official from May 1, 2013 through Supplement 2, dated December 1, 2013, which is hereby adopted and incorporated by reference.

(51) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(52) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-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 17b.

R156-17b-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.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(f), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division that are found to be in compliance with this chapter will be returned to the PIC of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

(4) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC except for pharmaceutical

administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door;

(b) hospital clinic pharmacy;

(c) methadone clinics;

(d) nuclear;

(e) branch;

(f) hospice facility pharmacy;

(g) veterinarian pharmaceutical facility;

(h) pharmaceutical administration facility; and

(i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

(a) manufacturing;

(b) producing;

(c) wholesaling;

(d) distributing; and

(e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a PIC licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a PIC and include:

(a) analytical laboratory;

(b) animal euthanasia;

(c) durable medical equipment provider;

(d) human clinical investigational drug research facility; and

(e) medical gas provider.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC shall have one PIC who is employed on a full-time basis as defined by the employer, who acts as a PIC for one pharmacy. However, the PIC may be the PIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

(8) The PIC shall comply with the provisions of Section R156-17b-603.

R156-17b-303a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(b), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(7), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is accredited or conducted by the American Society of Health

System Pharmacists, the National Pharmacy Technician Association, or a branch of the Armed Forces of the United States, and meets the following standards:

(a) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and

(b) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that address:

(i) the specific manner in which supervision will be completed; and

(ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examinations as listed in Subsection R156-17b-303c(4) within two years from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(a) An individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame or within six months after completion of a pharmacy technician training program, whichever comes first:

(i) is no longer eligible for employment as a technician-in-training and shall work in the pharmacy only as supportive personnel; and

(ii) shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(5) Pharmacy technician training programs that receive Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) until January 1, 2016. The Division will accept and review applications for approval of pharmacy technician training programs submitted on or before March 31, 2014. The criteria used by the Division to determine whether a pharmacy technician program is approved shall be the criteria established in Subsection R156-17b-303a(2) of the rule effective immediately prior to this rule.

(6) An applicant for licensure as a pharmacy technician is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board;

(c) has passed and maintained current PTCB or ExCPT certification; and

(d) has passed the Utah Pharmacy Technician Law and Rule Examination.

R156-17b-303b. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist for graduates of all U.S. and foreign pharmacy schools, include the following:

(a) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2001, which is hereby incorporated by reference.

(i) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(ii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(iii) Advanced pharmacy practice experiences (APPE) shall include at least 1,440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(iv) Required experiences shall:

(A) include primary, acute, chronic, and preventive care among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(v) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(b) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern shall notify the Division within 15 days of the suspension or dismissal.

(3) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

R156-17b-303c. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that shall be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(3) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(4) In accordance with Subsection 58-17b-305(1)(g), the examinations which shall be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination, taken as part of the application for licensure, with a minimum passing score of 88 percent; and

(b) the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

(5) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

R156-17b-303d. Qualifications for Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-

301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure or enrolled in the second year of a pharmacy graduate residency program;

(b) submit a complete application for licensure as a pharmacist except the passing of the NAPLEX and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(4) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-305. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-307. Qualifications for Licensure - Criminal Background Checks.

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and management of the pharmacy and the facility in which the pharmacy is located.

(2) The following individuals associated with an applicant for licensure as a pharmacy shall be subject to the criminal background check requirements set forth in Section 58-17b-307:

(a) the PIC;

(b) the PIC's immediate supervisor;

(c) the senior person in charge of the facility in which the pharmacy is located;

(d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare; and

(e) owners of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare.

R156-17b-308. 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 17b is established by rule in Section R156-1-308a.

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle 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.

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

(iv) training or educational presentations offered by the Division.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning

courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

(iv) training or educational presentations offered by the Division.

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

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

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

R156-17b-310. Exemption from Licensure - Dispensing of Cosmetic, Injectable Weight Loss, or Cancer Drug Treatment Regimen Drugs.

(1) A cosmetic drug that can be dispensed by a prescribing practitioner or optometrist in accordance with Subsection 58-17b-309 is limited to Latisse.

(2) An injectable weight loss drug that can be dispensed by a prescribing practitioner in accordance with Subsection 58-17b-309 is limited to human chorionic gonadotropin.

(3) A cancer drug treatment regimen that can be dispensed by a prescribing practitioner or an individual employed by the prescribing practitioner in accordance with Subsection 58-17b-309.5(1) and (2) means a prescription drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient.

(a) A prescribing practitioner who chooses to dispense prescription medications shall disclose to the patient that the cancer drug treatment regimen may be obtained from a pharmacy unaffiliated with the prescribing practitioner and offer to the patient the opportunity to consult with a pharmacist of the patient's choosing if the patient desires patient counseling.

(b) Practitioners are required to document this interaction by keeping a signature log of all patients who have received this written information. These records are required to be kept for a period of five years and shall be readily available for inspection.

(4) A prescribing practitioner who chooses to dispense prescription medications shall meet the standards set forth in

R156-17b-603 through R156-17b-605 and R156-17b-609 through R156-17b-611; however, a prescribing practitioner is not required to employ a pharmacist in charge.

(5) In accordance with Subsections 58-17b-309(4)(c) and 58-17b-309.5(2)(b)(viii), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient to the prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container indicating the following minimum information:

(a) the name, address and telephone number of the prescribing practitioner or optometrist prescribing and dispensing the drug;

(b) the serial number of the prescription as assigned by the dispensing prescribing practitioner or optometrist;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient;

(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

(g) the beyond use date.

(6) A prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient shall keep inventory records for each drug dispensed pursuant to R156-17b-605 and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist pursuant to R156-17b-609. Those records shall be made available to the Division upon request by the Division.

(a) The general requirements for an inventory of drugs dispensed by a prescribing practitioner, the prescribing practitioner's employee, or optometrist include:

(i) the prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

(ii) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(iii) the inventory records shall be filed separately from all other records;

(iv) the person taking the inventory and the prescribing practitioner or optometrist shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the prescribing practitioner or optometrist and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(v) the initial inventory shall be completed within three working days of the date on which the prescribing practitioner or optometrist begins to dispense a drug under Sections 58-17b-309 and 58-17b-309.5; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a prescribing practitioner or optometrist in accordance with Sections 58-17b-309 and 58-17b-309.5 for a period of at least

one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

- (i) full name of the patient, address, telephone number, date of birth or age, and gender;
- (ii) patient history where significant, including known allergies and drug reactions; and
- (iii) a list of drugs being dispensed including:
 - (A) name of prescription drug;
 - (B) strength of prescription drug;
 - (C) quantity dispensed;
 - (D) prescription drug lot number and name of manufacturer;
 - (E) date of filling or refilling;
 - (F) charge for the prescription drug as dispensed to the patient;
 - (G) any additional comments relevant to the patient's drug use; and
 - (H) documentation that patient counseling was provided in accordance with Subsection (7).

(7) A prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, shall include the following elements when providing patient counseling:

- (a) the name and description of the prescription drug;
- (b) the dosage form, dose, route of administration and duration of drug therapy;
- (c) intended use of the drug and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescription refill information;
- (i) action to be taken in the event of a missed dose;
- (j) prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
- (k) the date after which the prescription should not be taken or used, or the beyond use date.

(8) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that shall be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, provides that the storage space shall be:

- (a) kept in an area that is well lighted, well ventilated, clean and sanitary;
- (b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;
- (c) equipped with a security system to permit detection of entry at all times when the prescribing practitioner's or optometrist's office or clinic is closed;
- (d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and
- (e) securely locked with only the prescribing practitioner or optometrist having access when the prescribing practitioner's

or optometrist's office or clinic is closed.

(9) In accordance with Subsections 58-17b-309(5) and 58-17b-309.5(1)(b), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2), or a drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient requires reconstitution or compounding to prepare the drug for administration, the prescribing practitioner or optometrist shall follow the USP-NF 797 standards for sterile compounding.

(10) In accordance with Subsection 58-17b-309(5), factors that shall be considered by licensing boards when determining if a drug may be dispensed by a prescribing practitioner, the prescribing practitioner's employee or optometrist, include whether:

- (a)(i) the drug has FDA approval;
- (ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or
- (B) the prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;
- (b) the drug has been approved for self administration by the FDA;
- (c) the stability of the drug is adequate for the supply being dispensed; and
- (d) the drug can be safely dispensed by a prescribing practitioner or optometrist.

(11) Standards for reporting to the Utah Controlled Substance Database shall be the same standards as set forth in the Utah Controlled Substance Database Act, Title 58, Chapter 37f, and the Utah Controlled Substance Database Act Rule, R156-37f.

R156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern or pharmacy technician whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time that he can demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(4) conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed

to do so, in violation of Subsection 58-17b-501(3)(b):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(5) buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret, in violation of Subsection 58-17b-501(5):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

initial offense: \$500 - \$1,000
subsequent offense(s): \$1,500 - \$5,000

(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500
subsequent offense(s): \$1,000 - \$2,500

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000
subsequent offense(s): \$5,500 - \$10,000

(16) misbranding or adulteration of any drug or device or

the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: \$100 - \$500
subsequent offense(s): \$2,000 - \$10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(27) preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):

- initial offense: \$500 - \$1,000
 subsequent offense(s): \$2,500 - \$5,000
 (28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):
 initial offense: \$250 - \$500
 subsequent offense(s): \$2,000 - \$10,000
 (29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):
 initial offense: \$250 - \$500
 subsequent offense(s): \$500 - \$750
 (30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):
 initial offense: \$100 - \$500
 subsequent offense(s): \$500 - \$1,000
 (32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):
 initial offense: \$50 - \$100
 subsequent offense(s): \$200 - \$300
 (33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):
 initial offense: \$100 - \$200
 subsequent offense(s): \$200 - \$500
 (34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$2,000 - \$10,000
 (35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (36) failing to return or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):
 initial offense: \$100 - \$250
 subsequent offense(s): \$300 - \$500
 (37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):
 initial violation: \$50 - \$100
 failure to comply within determined time: \$250 - \$500
 subsequent violations: \$250 - \$500
 failure to comply within established time: \$750 - \$1,000
 (38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):
 initial offense: \$100 - \$500
 subsequent offense(s): \$500 - \$1,000
 (40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):
 Pharmacist initial offense: \$100 - \$250
 Pharmacist subsequent offense(s): \$500 - \$2,500
 Pharmacy initial offense: \$250 - \$1,000
 Pharmacy subsequent offense(s): \$500 - \$5,000
 (41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):
 Pharmacist initial offense: \$50 - \$100
 Pharmacist subsequent offense(s): \$250 - \$500
 Pharmacy subsequent offense(s): \$1,000 - \$2,000
 (42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):
 Pharmacy personnel initial offense: \$500 - \$2,500
 Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000
 Pharmacy: \$2,000 per occurrence
 (43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):
 Double the original penalty amount up to \$10,000
 (44) failing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):
 initial offense: \$500 - \$2,500
 subsequent offense: \$5,000 - \$10,000
 (46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
 (47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
 (48) failing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection R156-17b-502(20):
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
 (49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):
 initial offense: \$500 - \$2,000
 subsequent offense: \$2,000 - \$10,000
 (50) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):
 Pharmacist initial offense: \$100 - \$300
 Pharmacist subsequent offense(s): \$500 - \$1,000
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$500 - \$1,250
 (51) practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
 (54) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000

(55) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$100 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(62) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(63) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(65) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(66) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(67) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000
subsequent offense(s): \$500 - \$2,000

(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(71) 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, in violation of Subsection R156-1-501(1):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(72) practicing a regulated occupation or profession in, through, or with a limited liability company that 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, in violation of Subsection R156-1-501(2):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(74) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(75) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(76) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-

501(6):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: \$1,000 - \$5,000
subsequent offense(s) \$5,000 - \$10,000

(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(85) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(87) any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for

Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(11) failing to identify licensure classification when communicating by any means;

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

(14) failing to offer to counsel any person receiving a prescription medication;

(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(16) failing to comply with the PIC standards as established in Section R156-17b-603;

(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;

(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(19) dispensing medication that has been discontinued by the FDA;

(20) failing to keep or report accurate records of training hours;

(21) failing to provide PIC information to the Division within 30 days of a change in PIC;

(22) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and

(24) effective November 30, 2014, failing to comply with prescription container label standards established in USP-NF Chapter 17.

R156-17b-601. Operating Standards - Pharmacy Technician.

In accordance with Subsection 58-17b-102(53), practice as a licensed pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a

database or patient profile;

- (d) preparing labels;
- (e) retrieving medications from inventory;
- (f) counting and pouring into containers;
- (g) placing medications into patient storage containers;
- (h) affixing labels;
- (i) compounding;
- (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-10253;
- (k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology that will be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes which identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(53)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(53)(b)(iv), does not include authorization of a refill of a legend drug.

(3) Pharmacy technicians, including no more than one pharmacy technician-in-training per shift, shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(2)(s).

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(48), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-in-charge.

(1) The PIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address shall be established by the PIC or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or responsible party shall notify the Division of the pharmacy's secure email address initially as follows:

(a) at the September 30, 2013 renewal for all licensees; and

(b) thereafter, on the initial application for licensure.

(3) The duties of the PIC shall include:

(a) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(d) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(e) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(f) education and training of pharmacy technicians;

(g) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(h) disposal and distribution of drugs from the pharmacy;

(i) bulk compounding of drugs;

(j) storage of all materials, including drugs, chemicals and biologicals;

(k) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(l) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(m) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(n) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(o) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(p) implementation of an ongoing quality assurance

program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(q) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(r) assuring that all personnel working in the pharmacy have the appropriate licensure;

(s) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(t) assuring that the PIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC within 30 days of the change; and

(u) assuring with regard to the secure email address used for self-audits and pharmacy alerts that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC shall forward to the Division a written notice of the closing that

includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(5) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC cannot provide notification 14 days prior to the closing, the PIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a typewritten or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than

1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to no more than two pharmacy interns during a working shift; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:

(a) all supportive personnel shall be under the supervision of a licensed pharmacist; and

(b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Reserved.

Reserved.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs

obtained by the patient at the pharmacy including:

- (i) name of prescription drug;
 - (ii) strength of prescription drug;
 - (iii) quantity dispensed;
 - (iv) date of filling or refilling;
 - (v) charge for the prescription drug as dispensed to the patient; and
 - (c) any additional comments relevant to the patient's drug use.
- (3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

- (a) the name and description of the prescription drug;
- (b) the dosage form, dose, route of administration and duration of drug therapy;
- (c) intended use of the drug, when known, and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescription refill information;
- (i) action to be taken in the event of a missed dose;
- (j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
- (k) the date after which the prescription should not be taken or used, or the beyond use date.

(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Counseling shall be:

(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;

(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and

(c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.

(6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.

(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following

information:

- (a) date of the delivery;
- (b) unique identification number of the prescription drug order;
- (c) patient's name;
- (d) patient's phone number or the phone number of the person picking up the prescription; and
- (e) signature of the person picking up the prescription.

(8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

R156-17b-611. Operating Standards - Drug Therapy Management.

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

(a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;

(b) collecting and reviewing patient histories;

(c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and

(e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage or duration of drug treatment;

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to

the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist or pharmacy intern at the pharmacy holding the prescription to a pharmacist or pharmacy intern at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist or pharmacy intern and receiving pharmacist or pharmacy intern shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist or pharmacy intern to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

(15) Effective November 30, 2014, prescription container labels shall comply with standards established in USP-NF Chapter 17.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(27) through (28), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred

prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile

pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet shall contain at a minimum:

- (i) the formula;
 - (ii) the components;
 - (iii) the compounding directions;
 - (iv) a sample label;
 - (v) evaluation and testing requirements;
 - (vi) sterilization methods, if applicable;
 - (vii) specific equipment used during preparation such as specific compounding device; and
 - (viii) storage requirements;
- (e) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:
- (i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;
 - (ii) manufacturer lot number for each component;
 - (iii) component manufacturer or suitable identifying number;
 - (iv) container specifications (e.g. syringe, pump cassette);
 - (v) unique lot or control number assigned to batch;
 - (vi) beyond use date of batch prepared products;
 - (vii) date of preparation;
 - (viii) name, initials or electronic signature of the person or persons involved in the preparation;
 - (ix) names, initials or electronic signature of the responsible pharmacist;
 - (x) end-product evaluation and testing specifications, if applicable; and
 - (xi) comparison of actual yield to anticipated yield, when appropriate;
- (f) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:
- (i) the unique lot number assigned to the batch;
 - (ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;
 - (iii) quantity;
 - (iv) beyond use date and time, when applicable;
 - (v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and
 - (vi) device-specific instructions, where appropriate;
 - (g) the beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;
 - (i) sources of drug stability information shall include the following:
 - (A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;
 - (B) manufacturer recommendations; and
 - (C) reliable, published research;
 - (ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and
 - (iii) methods for establishing beyond use dates shall be documented; and
 - (h) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.
- (4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:
- (a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;

- (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- (d) R156-17b, Utah Pharmacy Practice Act Rule;
- (e) Title 58, Chapter 37, Utah Controlled Substances Act;
- (f) R156-37, Utah Controlled Substances Act Rule;
- (g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

- (i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products (orange book); and

(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility or parent company shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy includes a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(8) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

- (1) A nuclear pharmacy shall have the following:
 - (a) have applied for or possess a current Utah Radioactive Materials License; and
 - (b) adequate space and equipment commensurate with the scope of services required and provided.
- (2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.
- (3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.
- (4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.
- (5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.
- (6) This rule does not prohibit:
 - (a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or
 - (b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.
- (7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.
- (8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.
- (9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-614e. Class B - Dispensing Drugs from an Emergency Department and Upon Discharge from a Rural Hospital Pharmacy.

The "Guidelines for Hospital Pharmacies and Emergency Department Treatment" document, adopted May 21, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard to be utilized by rural hospital emergency departments dispensing a short course of necessary medications to patients when a pharmacy is not open to fill their prescriptions.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

- (1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.
- (2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.
- (3) An applicant for licensure as a pharmaceutical

wholesale distributor shall provide the following minimum information:

- (a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");
- (b) Name of the owner and operator of the license as follows:
 - (i) if a person, the name, business address, social security number and date of birth;
 - (ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;
 - (iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;
 - (iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;
 - (v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and
 - (c) any other relevant information required by the Division.
- (4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:
 - (a) is at least 21 years of age;
 - (b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;
 - (c) is employed by the applicant full time in a managerial level position;
 - (d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;
 - (e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and
 - (f) is serving in the capacity of a designated representative for only one licensee at a time.
- (5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.
- (6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities shall undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.
- (7) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.
- (8) All Class C pharmacies shall:
 - (a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;
 - (b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;
 - (c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution

or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(9) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(10) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(11) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form; and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(12) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(13) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(14) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102(14)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(15) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(16) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and

withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(17) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(18) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(19) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(20) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of Class A or B pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs that will be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards - Animal Euthanasia.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal euthanasia facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug

research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal euthanasia facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval which include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

(2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

R156-17b-617d. Class E Pharmacy Operating Standards - Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment

necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such a way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, April 1, 2012 edition, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b 601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for

changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors. Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated

pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

- (i) identity of system accessed;
- (ii) identify of the individual accessing the system;
- (iii) type of transaction;
- (iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

- (a) assign, discontinue or change access to the system;
- (b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

- (a) current Basic Life Support (BLS) certification; and
- (b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

- (iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

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58-17b-601(1)

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.

R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

- (a) classifying Division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at Division adjudicative proceedings; and
- (c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-4.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) special appeals board held in accordance with Section 58-1-402;
- (b) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (c) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202, that result in the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed through a citation;
 - (vi) administrative fine except when imposed through a citation; and
 - (vii) issuance of a public reprimand;
- (b) unilateral modification of a disciplinary order; and
- (c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

- (a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (b) denial of application for initial licensure or relicensure;
- (c) denial of application for renewal or reinstatement of licensure;
- (d) approval or denial of application for inactive or emeritus licensure status;
- (e) board of appeal under Subsection 15A-1-207(3);
- (f) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;
- (g) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);
- (h) approval or denial of request to surrender licensure;
- (i) approval or denial of request for entry into diversion program under Section 58-1-404;
- (j) matters relating to diversion program;
- (k) citation hearings held in accordance with citation

authority established under Title 58;

(l) approval or denial of request for modification of disciplinary order;

(m) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(n) approval or denial of request for correction of procedural or clerical mistakes;

(o) approval or denial of request for correction of other than procedural or clerical mistakes;

(p) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and

(q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.

(c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:

(i) Subsection 58-1-501(2)(c) or (d); or

(ii) Subsections R156-1-501(1) through (5).

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4-114, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4-114, and this rule.

R156-46b-402. Response to Notice of Agency Action in an Informal Proceeding.

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.

(3) An evidentiary hearing is required for the following informal proceedings:

(a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and

(b) R156-46b-202(1)(l), citation hearings held in accordance with Title 58.

(4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).

(5) Unless otherwise agreed 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 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing

November 21, 2013 **63G-4-102(6)**
Notice of Continuation January 31, 2011 **58-1-106(1)(a)**

R156. Commerce, Occupational and Professional Licensing.**R156-49. Dietitian Certification Act Rule.****R156-49-101. Title.**

This rule is known as the "Dietitian Certification Act Rule".

R156-49-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 49, as used in Title 58, Chapters 1 and 49 or this rule:

(1) "CDR" means the Commission on Dietetic Registration which is the credentialing agency for the Academy of Nutrition and Dietetics (formerly the American Dietetic Association).

(2) "Competency examination", as used in Subsection 58-49-4(4), means the Registration Examination for Dietitians or Dietitian Nutritionists established by the CDR.

(3) "Internship or pre-planned professional baccalaureate or post-baccalaureate experience", as used in Subsection 58-49-4(3), means completion of the supervised practice requirements established by the CDR.

(4) "Under the supervision of a certified dietitian", as used in Subsection 58-49-4(3), means that the supervising certified dietitian is responsible for the dietetic activities performed by the student or intern.

R156-49-103. 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 49.

R156-49-104. 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.

R156-49-302. Qualification for Licensure - CDR Registered Dietitian.

In accordance with Section 58-49-4, CDR registration as a Registered Dietitian is documentation that an individual has completed the requirements of Subsections 58-49-4(2), (3) and (4).

R156-49-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 49 is established by rule in Section R156-1-308a.

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

KEY: licensing, dietitians**December 23, 2013****Notice of Continuation February 7, 2013****58-49-1****58-1-106(1)(a)****58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rule.**

R156-60b-101. Title.

This rule is known as the "Marriage and Family Therapist Licensing Act Rule".

R156-60b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Directly related to marriage and family therapy", as used in R156-60b-304(2)(a), means that the continuing education course meets at least one of the following criteria:

(a) approved by an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a COAMFTE accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families.

(3) "Face to face supervision" as described in Subsection R156-60b-302a(1)(b)(ii)(G) includes both individual and group supervision.

(4) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

(5) "Individual supervision" means supervision between the supervisor and one or two supervisees.

(6) "Practicum", as used in R156-60b-302a(1)(b)(ii)(G) means a clinical program of training at an accredited school under general supervision in a setting other than a student's private practice.

(7) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60b-502.

R156-60b-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 60, Part 3.

R156-60b-104. Organization - Relationship to R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist shall:

(a) produce certified transcripts evidencing completion of a clinical master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education at the time the applicant obtained the education; or

(b)(i) produce certified transcripts evidencing completion of a clinical master's degree in marriage and family therapy or equivalent from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(ii) A program under Subsection (1)(b)(i) shall include the following:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(C) six semester hours/nine quarter hours of course work

in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/four quarter hours in professional ethics;

(E) three semester hours/four quarter hours in research methodology and data analysis;

(F) three semester hours/four quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not fewer than 600 hours which includes not fewer than 100 hours of face to face supervision and not fewer than 500 direct contact hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least 100 hours of direct supervision spread uniformly throughout the training period;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1,000 hours of mental health therapy of which at least 500 hours are in couple or family therapy with two or more clients participating and at least one physically present; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

R156-60b-302c. Qualifications for Licensure - Examination Requirements.

Pursuant to the provisions of Subsection 58-60-305(1)(g), an applicant for licensure as a marriage and family therapist must pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

(1) be licensed as a marriage and family therapist in good standing for not less than two years;

(2) be currently licensed as a marriage and family therapist in the state in which the training is being performed; and

(3) meet one of the following three options:

(a) be currently approved by AAMFT as a marriage and family therapist supervisor;

(b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or

(c)(i) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy (UAMFT).

(ii) The instruction under Subsection (3)(c)(i) shall include the following:

(A) four hours of review of models of MFT and supervision;

(B) eight hours of MFT supervision processes and practice;

(C) four hours of research on effective outcomes and processes of supervision; and

(D) four hours of AAMFT Code of Ethics, state rules and case studies related to MFT supervision.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be 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) be 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, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the Division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established;

(10) supervise not more than three supervisees at any given time unless approved by the Board and Division;

(11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

R156-60b-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 60, is established by rule in Section R156-1-308a(1).

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

R156-60b-304. Continuing Education.

(1) In accordance with Section 58-60-105, there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing October 1st of each even numbered year, a marriage and family therapist shall be required to complete not fewer than 40 hours of continuing education directly related to the licensee's professional practice of which:

(a) at least 15 hours must be directly related to marriage and family therapy; and

(b) at least six hours must be in ethics/law, of which at least three hours must be directly related to marriage and family therapy.

(3) The required number of hours of continuing 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.

(4) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide continuing education relevant to the practice of a mental health therapist; and

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

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of universities, colleges or professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of mental health therapy;

(b) a maximum of 14 hours per two year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as a mental health therapist;

(c) a maximum of 15 hours per two year period may be recognized for clinical readings, internet or distance learning courses directly related to practice as a mental health therapist; and

(d) a maximum of two hours per two year period may be for continuing education from the Division of Occupational and Professional Licensing.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the Board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to maintain professional boundaries with a client within two years after the formal termination of therapy or last professional contact, with or without client consent, including engaging in any of the following:

(a) dual or multiple relationships; or

(b) romantic, intimate or sexual relationship;

(6) if engaging in any activity or relationship referenced in Subsection (5) with a client after two years following the formal termination of therapy or last professional contact, failing to demonstrate that there has been no exploitation or injury to the client or to the client's immediate family;

(7) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of the personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(8) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(9) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(10) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination

concerning an individual's civil or legal rights;

(11) exploiting a client for personal gain;

(12) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(13) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(14) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(15) failure to cooperate with the Division during an investigation; and

(16) failing to abide by provisions 1 to 8.8 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 2012, which is adopted and incorporated by reference.

**KEY: licensing, therapists, marriage and family therapist
December 23, 2013**

58-1-106(1)(a)

Notice of Continuation August 31, 2009

58-1-202(1)(a)

58-60-301

R277. Education, Administration.**R277-116. Utah State Board of Education Internal Audit Procedure.****R277-116-1. Definitions.**

A. "Appointing authority" means the Board.

B. "Audit" means internal reviews or analyses or a combination of both of Utah State Board of Education programs, activities and functions that may address one or more of the following objectives:

(1) to verify the accuracy and reliability of USOE or Board records;

(2) to assess compliance with management policies, plans, procedures, and regulations;

(3) to assess compliance with applicable laws, rules and regulations;

(4) to evaluate the efficient and effective use and protection of Board, state, or federal resources; or

(5) to verify the appropriate protection of USOE assets;

(6) to review and evaluate internal controls over LEA and USOE accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of LEAs and the USOE.

C. "Audit Committee" means a standing committee appointed by the Board which shall consist of all members of the Finance Committee. The Chair of the Audit Committee shall be either the Board Chair or Board Vice Chair.

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

E. "Internal Auditor" means person or persons appointed by the Superintendent with the consent of the Audit Committee and the full Board to direct the internal audit function for the Board and USOE.

F. "LEA," for purposes of this rule, means any local education agency under the supervision of the Board including any sub unit of school districts, Utah Schools for the Deaf and the Blind, Utah State Office of Rehabilitation, charter schools, regional service centers, area technology centers and vocational programs.

G. "Superintendent" means the State Superintendent of Public Instruction, who is the Agency Head within the meaning of the Utah Internal Audit Act.

H. "Survey work" means an internal review of Board rules, statutes, federal requirements and a limited sample of an LEA's programs, activities or documentation that may give rise to or refute the need for a more comprehensive audit. The preliminary or limited information derived from survey work is a part of the ongoing audit process and may be provided as a draft to the Audit Committee, to the Board or to the Superintendent upon request.

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

R277-116-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts, Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature, and by Section 63I-5-101 through 401 which provides standards and procedures for the Board, as the appointing authority for the USOE, to establish an internal audit program.

B. The purpose of this rule is to outline the Board's criteria

and procedures for internal audits of programs under its supervision.

R277-116-3. Audit Committee Responsibilities.

The Audit Committee shall:

A. determine the priority for survey work or audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;

B. consent to the appointment or removal of the Internal Auditor.

C. review and approve the annual internal audit plan and budget;

D. review internal and external audit reports, survey work, follow-up reports, and quality assurance reviews of the Internal Auditor;

E. meet at each regularly scheduled Board meeting with the Internal Auditor to discuss ongoing audits, audit priorities and progress, and other issues;

F. distribute drafts or preliminary versions of audits only to Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee, the auditee, and the Board are drafts and, as such, are not public records;

G. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;

H. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board; and

I. evaluate the Internal Auditor at least annually in a formal evaluation process.

R277-116-4. Internal Auditor Authority and Responsibilities.

A. The Internal Auditor shall work closely with and receive regular supervision from the Superintendent.

B. The Internal Auditor shall report initially to the Superintendent. Following the Superintendent's response, the Internal Auditor reports to the Audit Committee and ultimately to the Board.

C. The Internal Auditor's work shall be determined primarily by a risk assessment developed by the Internal Auditor and approved by the Audit Committee at least annually. The risk assessment shall:

(1) consider public education programs for which the Board has responsibility;

(2) consider and evaluate which public education programs, activities or responsibilities are most critical to:

(a) student safety;

(b) student achievement;

(c) efficient management of public education resources; and

(d) the priorities of public education as determined by the Board.

D. The Internal Auditor shall meet with the Audit Committee or the Board, at the direction of either, to inform both the Audit Committee and the Board of progress on assigned audits and any additional information or assignments requested by the Audit Committee or the Board.

E. The Internal Auditor shall conduct audits as recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

F. The Internal Auditor shall immediately notify the Audit Committee and the Board of any irregularity or serious deficiency discovered in the audit process or of any impediment

or conflict to accomplishing an audit as directed by the Board.

G. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.

H. The Internal Auditor shall maintain the classification of any public records consistent with Title 63G, Chapter 2, Government Records Access and Management Act.

I. Audit Committee members, Board members and USOE employees shall maintain information acquired in the audit process in the strictest confidence consistent with the Public Employees Ethics Act, Section 67-14-4.

J. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board. All public education entities shall cooperate fully with Internal Auditor requests; The Internal Auditor is not required to issue subpoenas or make GRAMA requests under Section 63G-2-202 to receive requested information from public education entities.

Notice of Continuation December 16, 2013 53A-1-401(3)
53A-1-405
53A-1-402(1)(e)
53A-17a-147(2)
63I-5-101 through 401

R277-116-5. Audit Plans.

A. An audit plan shall be prepared by the Internal Auditor and shall:

- (1) be reviewed regularly by both the Superintendent and the Audit Committee;
- (2) identify the individual audits to be conducted during each year;
- (3) determine the adequacy and efficiency of the USOE's internal monitoring and control of programs and personnel;
- (4) identify the related resources to be devoted to each of the respective audits; and
- (5) ensure that audits that evaluate the efficient and effective use of public education resources are adequately represented in the plan.

B. The Internal Auditor shall submit the audit plan first to the Superintendent for review, next to the Audit Committee for review, modification, update, and approval. Each audit plan shall expressly state an anticipated completion date.

C. The Internal Auditor shall:

- (1) ensure that audits are conducted in accordance with professional auditing standards such as those published by the Institute of Internal Auditors, Inc., the American Institute of Certified Public Accountants, and, when required by other law, regulation, agreement, contract, or policy, in accordance with Government Auditing Standards, issued by the Comptroller General of the United States;
 - (a) all reports of audit findings issued by internal audit staff shall include a statement that the audit was conducted according to the appropriate standards;
 - (b) public release of reports of audit findings shall comply with the conditions specified by state laws and rules governing the USOE.
- (2) report concerns to the Audit Committee or the Board that arise as the result of survey work or audits that necessitate a direct review of the Superintendent's activities or actions;
- (3) report significant audit matters that cannot be appropriately addressed by the Audit Committee and the Board to either the Office of Legislative Auditor General or the Office of the State Auditor;
- (4) report quarterly to the full Board those issues which have the potential of opening up the Board, Superintendent, or USOE to liability or litigation;
- (5) conduct at least annually a risk assessment of the entire public education system and report the findings to the Audit Committee; and
- (6) regularly attend all Board meetings.

R277. Education, Administration.**R277-437. Student Enrollment Options.****R277-437-1. Definitions.**

A. "Available school or program" means a school or program currently designated under the law and this rule by a district as open to nonresident students.

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

C. "District of residence" means a student's school district of residence under Section 53A-2-201.

D. "Nonresident student" means a student attending or seeking to attend a school other than the designated school of residence.

E. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

(1) Take total expenditures before interfund transfer for:

- (a) maintenance and operation;
- (b) tort liability; and
- (c) capital projects.

(2) Subtract from the sum of (1), above:

(a) resident district's taxes collected under the Minimum School Program;

(b) state revenue;

(c) federal revenue; and

(d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).

(3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

F. "Safety emergency" means a situation in which:

(1) enrollment in a specific school is necessary to protect the health of the student as determined by a specific medical recommendation from a medical doctor; or

(2) enrollment in a specific school is necessary to protect the emotional or physical safety of a student, based on documentation/evidence provided by the student's previous school, the parent(s)/guardian(s), a clinical psychologist who is tracking the student, or cumulative information.

G. "School of residence" means the school which a student would normally attend in the student's district of residence.

H. "School into which the school's students feed" for purposes of this rule means school boundaries and feeder systems as determined by the local board of education which may change over time.

I. "Serious infraction of the law or school rules" means chronic misbehavior by a student which is likely, if it were to continue after the student was admitted, to endanger persons or property, cause serious disruptions in the school, or to place unreasonable burdens on school staff.

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

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by 53A-2-210 which directs the Board to provide a formula by rule for resident students who attend school districts under Section 53A-2-206.5 et seq. This rule is consistent with federal laws and regulations, including the Individuals with Disabilities Act (IDEA), 20 U.S.C., Chapter 33, Section 1412 as amended by Public Law 102-119, and the Elementary and Secondary Education Act of 2001 (ESEA), P.L. 107-110.

B. The purpose of this rule is:

(1) to establish necessary definitions;

(2) to establish a formula for the residual per pupil

expenditure for school districts to reimburse each other for full and part-time nonresident students;

(3) to summarize school, school district, and state responsibilities under Section 53A-2-206.5; and

(4) to provide a standard statewide open enrollment form required under Section 53A-2-207(4)(b).

R277-437-3. Local School Board and District Responsibilities.

A. Prior to September 30, 2008, a local board shall announce policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence. Local school boards shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of Section 53A-2-206.5 et seq.

B. The school district shall adjust timelines for open enrollment applications if the district is developing a district-wide reconfiguration of its schools consistent with Section 53A-2-206.5(1).

C. A school district may establish longer or broader timelines for enrollment than required by law.

D. If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Section 53A-2-207(4)(c).

E. As required under Subsection 53A-2-210(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

F. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53A-2-209(1).

G. A local board of education may deny enrollment of nonresident students for reasons identified in R277-437-II.

H. There shall be no presumption of eligibility for students to participate in activities governed by the Utah High School Activities Association (UHSAA) if students transfer under Section 53A-2-206.5.

R277-437-4. State Board of Education Responsibilities.

A. Capacity for special education classrooms shall:

(1) be consistent with Utah Special Education Caseload Guidelines; and

(2) depend on staffing and funding constraints of the receiving school district.

B. A standard enrollment options application form shall be available on the USOE website by May 15, 2008.

R277-437-5. Transportation.

A school district may transport its students to schools in other districts under Subsection 53A-2-210(3)(b)(i).

KEY: public education, enrollment options

July 9, 2012

Art X Sec 3

Notice of Continuation December 16, 2013 53A-1-401(1)(b)

53A-2-210

53A-2-206.5 et seq.

R277. Education, Administration.**R277-494. Charter School and Online Student Participation in Extracurricular or Co-curricular School Activities.****R277-494-1. Definitions.**

A. "Activity fees" means fees that are approved by a local board and charged to all students to participate in any or all activities sponsored by or through the public school. Fees vary among districts and schools and entitle a public school student to participate in regular school activities, to try out for extracurricular or co-curricular school activities, to receive transportation to activities, and to attend regularly scheduled public school activities.

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

C. "Charter school" means a school acknowledged as a charter school by a chartering entity under Sections 53A-1a-515, 53A-1a-521, and R277-470 or by the Board under Section 53A-1a-505.

D. "Co-curricular activity" means a school district or school activity, course or experience that includes a required regular school day component and an after school component; special programs or activities such as programs for gifted and talented students, summer programs and science and history fairs are co-curricular activities.

E. "Extracurricular activity" means an athletic program or activity sponsored by the public school and offered, competitively or otherwise, to public school students outside of the regular school day or program.

F. "Online school" means a school:

- (1) that provides the same number of classes consistent with the requirement of similar public schools;
- (2) that delivers course work via the internet;
- (3) that has designated a readily accessible contact person;

and

- (4) that provides the range of services to public education students required by state and federal law.

G. "Pay to play fees" means the fees charged to a student to participate in a specific school-sponsored extracurricular or co-curricular activity. All fees shall be approved annually by the local board of education.

H. "Student's boundary school" means the school the student is designated to attend according to where the student's legal guardian lives or the school where the student is enrolled under Section 53A-2-206.5 et seq.

I. "Student's school of enrollment" means the public school in which the student is enrolled consistent with Section 53A-11-101 et seq.

J. "Student fee waivers" means all expenses for an activity that are waived for student participation in the activity consistent with Section 53A-12-103 et seq. and R277-407.

K. "School participation fee" means the fee paid by the charter/online school to the boundary school consistent with R277-494-4 for student participation in extracurricular or co-curricular activities.

L. "Student participation fee" means the fee charged to all participating charter/online and traditional school students by the boundary school for designated extracurricular or co-curricular activities consistent with R277-407.

R277-494-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, Section 53A-1a-519(5) that directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at school district schools, and Section 53A-2-214(6) which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at school district

schools.

B. The purpose of this rule is to inform school districts, charter and online schools, and parents of school participation fees and state-determined requirements for a charter school or a public online school student to participate in extracurricular athletics and activities at a student's boundary school.

R277-494-3. Requirements for Payment and Participation Integral to the Schedule.

A. A charter or online school shall allow student participation in activities designated under R277-494-1E upon satisfaction of requirements and payments of this rule and satisfaction of school district standards and requirements.

B. A school participation fee of \$75.00 per student shall be paid by the student's school of enrollment to the boundary school at which the student desires to participate. Upon annual payment of the school participation fee, the student may participate in all extracurricular school activities as defined in R277-494-1E during the school year for which the student is qualified and eligible.

C. The participation fee paid by the charter or online school is in addition to individual student participation fees for specific extracurricular activities and the activity fees charged to all students in the secondary school to supplement school activities as assessed by the school consistent with this rule. Student participation fees or required activity fees shall be paid to the boundary school by the participating student.

D. All fees, including school participation fees, student participation fees and activity fees shall be paid prior to student participation.

E. If a participating charter or online school student qualifies for fee waivers, all waived student participation fees shall be paid to the boundary school by the student's school of enrollment prior to student participation.

R277-494-4. Additional Provisions.

A. Charter, online and traditional schools may negotiate to allow student participation in co-curricular activities such as debate, drama, choral programs, specialized courses or programs offered during the regular school day, and school district-sponsored enrichment programs or activities. Participating charter/online students shall be required to meet all attendance and course requirements of all boundary public school students.

B. A charter and online student participating under this rule shall meet all eligibility requirements and timelines of the boundary school.

KEY: extracurricular, co-curricular, activities, student participation

**December 9, 2013
Notice of Continuation October 4, 2013**

**Art X Sec 3
53A-1-401(3)
53A-1a-519(5)
53A-2-214(6)**

R277. Education, Administration.**R277-495. Required Policies for Electronic Devices in Public Schools.****R277-495-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Electronic device" means a privately owned device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.
- C. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.
- D. "USOE" means the Utah State Office of Education.

R277-495-2. 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 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-901(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools.
- B. The purpose of this rule is to direct all public school districts or public schools, including charter schools, to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices while on public school premises.

R277-495-3. Local Board and Charter School Responsibilities.

- A. Local boards of education and local charter governing boards shall establish a timeline that requires all schools under their supervision have a policy governing the use of electronic devices in schools approved by local boards, effective and posted for students, employees, parents and community member access no later than April 1, 2009.
- B. Local boards and charter governing boards shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.
- C. Local boards and charter governing boards shall provide copies of their policies or clear electronic links to policies.
- D. School districts and schools within school districts shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

R277-495-4. Policy Requirements.

- A. Local policies shall include the following:
- (1) scope of coverage of the policy, including clear rules for school premises, school hours, school activities, after school activities, school sponsored activities at remote sites, vehicles transporting students to and from school activities.
 - (2) definitions of devices covered by policy;
 - (3) prohibitions against use of electronic devices during Utah Performance Assessment System for Students (U-PASS) assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;
 - (4) clear information about restrictions, if any, on when or where possession of electronic devices, active or deactivated, are strictly prohibited or allowed, such as the use of an electronic calculator by a student consistent with a current and valid IEP, as determined by the school district/school;
 - (5) prohibitions on the use of electronic devices in a way that bullies, humiliates, harasses, or intimidates school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violates local, state,

or federal laws; and

- (6) procedures, if any, and due process, for the confiscation and recovery of electronic devices used in violation of local policies.
- B. Local policies may also include the following:
- (1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;
 - (2) procedures to report the misuse of electronic devices;
 - (3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;
 - (4) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any;
 - (5) strategies for use of technology that enhance instruction; and
 - (6) directives, protections, and requirements, if any, for school employees or invitees, or both.
- C. The USOE shall receive an annual assurance from the school district or charter school governing board as required under R277-108 that the local board has presented and implemented an electronic device policy consistent with the timelines and provisions of this rule.
- D. School districts or traditional school and charter schools shall post their duly enacted electronic device policies on their district or school websites.

R277-495-5. USOE Responsibilities.

- A. The USOE shall provide resources, upon request, for school districts and schools as they develop electronic device policies, including sources for successful policies, assistance with reviewing draft policies, and information about bullying, harassing, and discrimination via electronic devices consistent with R277-609 and R277-613.
- B. The USOE shall develop a model policy or a policy framework to assist school districts and individual schools in developing and implementing their policies.
- C. The USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.
- D. The USOE shall ensure that parents and school employees are involved in the development and implementation of policies.
- E. The USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

**KEY: electronic devices, policy
July 11, 2011**

Notice of Continuation December 16, 2013

**Art X Sec 3
53A-1-401(3)
53A-11-901(2)(c)(i)**

R277. Education, Administration.**R277-502. Educator Licensing and Data Retention.****R277-502-1. Definitions.**

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "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; and
- (5) a record of disciplinary action taken against the educator.

F. "ESEA subject" 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).

G. "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.

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

- (1) 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 LEA or accredited private school;
- (2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;
- (3) additional requirements established by law or rule.

K. "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.

L. "License areas of concentration" means designations to

licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the professional educator license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval and Requirements.

A. The Board shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

- (1) be accredited by NCATE or TEAC; or
- (2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and
- (3) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(4) include coursework designed to ensure that the educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(5) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(6) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; requirements shall include the following minimum components, beginning August 1, 2014:

- (a) a minimum high school/college GPA of 3.0; and
- (b) a USOE-cleared fingerprint background check; and
- (c) a passing score on a Board-approved basic skills test;

or

(d) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(f) An institution may waive any of the entrance requirements provided in R277-502-3(5) based on program established guidelines for no more than 10 percent of an entrance cohort.

(7) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

- (1) observing and monitoring the accreditation process;
- (2) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;
- (3) reviewing program procedures to ensure that Board requirements for licensure are followed;
- (4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

E. After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

- (1) program summary;
- (2) accreditation findings;
- (3) program areas of distinction;
- (4) program enrollment;
- (5) program goals and direction.

F. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE and program approval is revoked by the Board under R277-502-3N.

G. New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

(1) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;

(4) information about program timelines and anticipated enrollment.

H. Applications for new educator preparation programs shall be approved by the Board.

I. Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

(1) shall be reviewed and approved by USOE;

(2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

J. An educator preparation program seeking accreditation may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the accreditation process.

K. A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of each year. The report shall summarize the institution's annual accreditation report and shall include the following:

(1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(2) information explaining any significant changes to course requirements or course content;

(3) the program's response to USOE-identified areas of concern or areas of focus;

(4) information regarding any program-determined areas of concern or areas of focus and the program's planned response;

(5) a summary explanation of students admitted under the waiver identified in R277-502-3C(5)(f) and an explanation of the waiver.

L. The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

M. Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

N. Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

O. An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

P. If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. Level 1 License Requirements

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the

preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

B. Level 2 License Requirements

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(3) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

C. Level 3 License Requirements

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. License Renewal Timeline

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the

following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);

(2) Elementary (1-8);

(3) Elementary (K-6);

(4) Middle (still valid, and issued before 1988, 5-9);

(5) Secondary (6-12);

(6) Administrative/Supervisory (K-12);

(7) Career and Technical Education;

(8) School Counselor;

(9) School Psychologist;

(10) School Social Worker;

(11) Special Education (K-12);

(12) Preschool Special Education (Birth-Age 5);

(13) Communication Disorders;

(14) Speech-Language Pathologist;

(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. Exceptions to the three Letters of Authorization limitation may be granted by the State Superintendent of Public Instruction or his designee on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) Following the expiration of the Letter of Authorization, the educator who is still not completely approved for licensing shall be considered under-qualified.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the

principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

Notice of Continuation August 14, 2012

53A-6-104
53A-1-401(3)

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Professional Educator License Fees.

A. The Board shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive.

E. Differentiated fees may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

KEY: professional competency, educator licensing

November 7, 2013

Art X Sec 3

R277. Education, Administration.**R277-527. International Guest Teachers.****R277-527-1. Definitions.**

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

B. "International guest teacher (guest teacher)" means a foreign educator who has earned a public teaching credential or license in a foreign country and who is currently legally residing in the United States and the state of Utah with the specific purpose to teach in Utah public schools. For this definition to apply, the international guest teacher shall be a resident of a foreign country that has a Memorandum of Understanding with the Board.

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

R277-527-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-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.

B. The purpose of this rule is to establish procedures for qualified international guest teachers who meet the definition of R277-527-1B to be effectively hired and placed by Utah school districts/charter schools with assistance and direction from the USOE to encourage cultural exchange and foreign language development among Utah public school students.

R277-527-3. Utah State Board of Education/USOE Responsibilities.

A. The Board shall develop and State Superintendent shall sign a Memorandum of Understanding between the Board and the appropriate government agency of the country of origin of guest teachers, as identified by the Board.

B. The USOE shall work with guest teachers and their resident countries and the United States Department of State, if necessary, to secure appropriate visas or travel and work documents for guest teachers to legally teach in the public schools in Utah.

C. The USOE shall verify that guest teachers have appropriate licenses or credentials from the guest teachers' resident countries that satisfy the requirements of Utah law and any applicable federal requirements.

D. The USOE shall work with interested school districts and charter schools to make schools aware of guest teachers with specific credentials and language skills and to inform guest teachers about openings in specific grade levels and curriculum areas in various geographic locations in Utah.

E. The USOE shall require and review a guest teacher's criminal background checks required under Section 53A-3-410 and a criminal background clearance from the guest teacher's resident country or both prior to authorizing the guest teacher to work in Utah.

F. The Board may determine that it will seek guest teachers only from foreign countries that provide transportation or per diem expenses or both for USOE representatives to screen and interview potential guest teachers.

G. Following review and approval of a guest teacher's credentials and background, a guest teacher may receive an International Guest Teacher license equivalent to a Level 1 license.

R277-527-4. International Guest Teacher Requirements.

A. Guest teachers shall have a United States issued social security number prior to a school district/charter school processing any payment to the guest teacher.

B. Guest teachers shall cooperate with the USOE in

required submission of information including criminal background check information, copies of credentials, copies of transcripts in the language and format designated by the USOE.

C. Guest teachers shall assume all responsibility for living and transportation expenses while participating in the International Guest Teachers Program.

D. Guest teachers shall be responsible for compliance with all state of Utah/Board and employing school district professional and ethical public school educator requirements.

E. Guest teachers who violate district employment or state or district professional practices may have their employment contract terminated consistent with at will employment provisions; the conduct of individual guest teachers may influence continued participation in the International Guest Teacher Program between the Board and a guest teacher's resident country.

R277-527-5. Other Provisions.

A. The opportunity for teachers from outside the United States to be licensed to teach in Utah schools with assistance provided by the USOE under this rule shall be available only to individuals from countries with which the Board has signed a Memorandum of Understanding.

B. A business or third party may not facilitate a Memorandum of Understanding between a foreign country and the Board, but may facilitate the hiring process at the request of the school district/charter school.

C. Internationally credentialed educators may seek appropriate licensing to teach in Utah schools. Those educators from countries that do not have Memoranda of Understanding with the Board shall be licensed under R277-502.

D. It is the responsibility of the prospective guest teacher or the guest teacher's home country to ensure that the guest teacher has the appropriate visa or authorization or both to live and teach in the United States for the agreed upon time period and teaching assignment.

KEY: international guest teachers

January 7, 2009

Notice of Continuation December 16, 2013

Art X Sec 3
53A-1-401(3)
53A-1-402(1)(a)

R305. Environmental Quality, Administration.**R305-4. Clean Fuels and Vehicle Technology Fund Grant and Loan Program.****R305-4-1. Authorization and Purpose.**

(1) As authorized by Section 19-1-404, this rule establishes procedures for:

(a) providing loans and grants to government agencies and private sector businesses to convert vehicles to run on a clean fuel, to purchase OEM vehicles, or to retrofit vehicles as provided under Section 19-1-403 to provide air pollution reduction benefits; and

(b) providing loans or state match grants for the purchase of clean fuel refueling equipment for a private sector business vehicle or government vehicle as provided under Section 19-1-403.

(2) As authorized by Section 19-1-404, this rule establishes criteria and conditions for:

(a) awarding grant and loan program monies; and

(b) loan repayment and the collection of loans.

R305-4-2. Definitions.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean-fuel vehicle" means clean-fuel vehicle as defined in Subsection 19-1-402(2).

"Department" means the Utah Department of Environmental Quality.

"Fund" means fund as defined in Subsection 19-1-403.

"Government vehicle" means government vehicle as defined in Subsection 19-1-402(6).

"Grant" means monies awarded to an applicant from the fund that do not have to be repaid.

"Electric-hybrid vehicle" means electric-hybrid vehicle as defined in Subsection 19-1-402(3).

"OEM vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Private sector business vehicle" means private sector business vehicle as defined in Subsection 19-1-402(9).

"Refueling equipment" means refueling equipment as defined in Subsection 19-1-402(10).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

R305-4-3. Grant and Loan Eligibility.

Eligibility for grants and loans from the fund is limited to projects for government vehicles and private sector business vehicles that meet the eligibility requirements set forth in R307-123, and for refueling equipment dispensing a clean fuel as provided for in Subsection 19-1-403-2(d) within the state of Utah.

R305-4-4. Preliminary Approval Application Procedure.

(1) All grant and loan applicants shall apply on forms provided by the Department as required by Subsection 19-1-404(1)(b)(vii)(A), and shall provide additional project information as requested by the Department.

(2) All private sector businesses applying for a loan shall also complete a financial application that includes the following information:

(a) a current credit report from the NACM Business Credit Services or other reporting bureau authorized by the Department;

(b) a completed balance sheet of the personal or real property that will be used to secure the loan;

(c) copies of federal and state income tax returns for the last two years for the corporation and the applicant; and

(d) additional information as requested by the Department.

(3) All Applicants:

(a) may be charged an application fee of \$140 for vehicle

loans, \$280 for grants, and \$350 for infrastructure loans as authorized in Subsection 19-1-403(4)(a)(ii);

(b) shall sign a statement acknowledging that:

(i) approved projects must meet all the eligibility requirements listed in R307-123; and

(ii) applicants that are pre-approved are not guaranteed project reimbursement by the Department; and

(c) shall agree in writing to the provisions in Subsections 19-1-404(1)(b)(vii)(B) through (E), and

(d) shall, in the event that a vehicle converted, retrofitted, or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident:

(i) continue to repay the loan whether or not the vehicle is repairable; or

(ii) appeal to the Department for a resolution as provided for in Subsection 19-1-404(1)(b)(vii)(C).

(A) Applicants that wish to appeal to the Department shall:

1. provide reasonable documentation that the vehicle converted, retrofitted, or purchased is inoperable through mechanical failure or accident; and

2. propose a course of action that may include adjusting the loan repayment schedule or terms of the loan or grant.

(B) Any remedy pursued by the Department will be handled on a case-by-case basis and at the discretion of the Department.

(4) Once the Department has deemed that the application is complete and the proposed project complies with this rule, the application shall be reviewed by a committee consisting of at least the following:

(a) the DAQ Grant and Loan Program Coordinator or designee;

(b) the DAQ Mobile Section Manager or designee;

(c) two DAQ technical specialists chosen by the Department; and

(d) other members as designated at the discretion of the Department.

(5) The committee will evaluate each application according to the criteria provided in Sections R305-4-6 and 7.

(6) When considering grant and loan applications, the Department may modify the dollar amount or project scope for which a grant or loan is awarded.

(7) Submission of an application under this program and this rule constitutes the applicant's acceptance of the criteria and procedures of this rule.

(8) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.

R305-4-5. Final Approval Procedure and Payment Process.

(1) Once an applicant's project has been pre-approved to receive a grant or loan, the applicant shall provide:

(a) for vehicles, the demonstration of eligibility requirements in R307-123-3 through 5; and

(b) for refueling equipment, the following documentation:

(i) the name of the facility (including facility and/or unit number, if applicable) where refueling equipment will be installed and used;

(ii) the address of the facility where refueling equipment will be installed and used;

(iii) the government-issued building permit for the site at which the refueling equipment will be installed and used;

(iv) an original or copy of the bill of sale or sales contract from the purchase of the refueling equipment; and

(v) if applicable:

(A) the name of the issuing entity for the matching grant;

(B) the name of the matching grant;

(C) the amount of the matching grant;

(D) the type of entity issuing the matching grant; and

(E) the grant agreement between awardee and the matching grant entity or entities.

(2) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.

(3) Once an applicant has obtained final approval to receive a grant or loan, including signed contract documents, monies from the fund will be issued as reimbursements for the applicant's project costs.

(4) Grant or loan monies for a state match of a federal or non-federal grant will only be issued to the applicant after the applicant's project has been approved by the granting entity for the federal or non-federal grant.

(5) The approved applicant shall continue to comply with the provisions of this rule.

R305-4-6. Prioritization of Awards for Grant Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding grants:

(1) The feasibility and practicality of the project;

(2) The financial need of the applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;

(3) Whether and to what extent the monies requested are being provided as a state match of a federal or nonfederal grant; and

(4) The environmental and other benefits to the state and local community attributable to the project.

(5) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(6) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(i) the technology selected for the project; and

(ii) the location of the project.

(7) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but is not limited to the following criteria:

(a) the pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the ratio of the total project cost to the environmental and other benefits attributable to the project; and

(d) the accessibility and openness of any refueling equipment to the public, if applicable.

R305-4-7. Prioritization of Awards for Loan Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding loans:

(1) The feasibility and practicality of the project;

(2) The financial need of applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;

(3) Whether and to what extent the monies requested are being provided as a state match of a federal or nonfederal grant;

(4) The environmental and other benefits to the state and local community attributable to the project; and

(5) The applicant's creditworthiness.

(6) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(7) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the technology selected for the project; and

(b) the location of the project.

(8) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the accessibility and openness of any refueling equipment to the public, if applicable; and

(d) the ratio of the total project cost to the environmental and other benefits attributable to the project.

R305-4-8. Grant Program Limitations.

(1) Grant applications shall not be approved if:

(a) awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a grant to an applicant would result in the fund balance being less than zero;

(e) the vehicle purchased with grant funds is an electric-hybrid vehicle;

(f) the OEM vehicle purchased with the grant funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant.

(g) the amount of a grant for any vehicle will exceed the provisions in Subsections 19-1-403(2)(c); or

(h) the total amount awarded, including federal or nonfederal grants, for the purchase of vehicle refueling equipment will exceed the actual cost of the refueling equipment.

(2) The annual combined total for all grants approved shall not exceed a maximum of \$250,000 as authorized by Subsection 19-1-404(1)(b)(i).

(3) The maximum number of vehicles purchased, converted, or retrofitted using grant funds by any fleet operator shall not exceed 100 vehicles, as authorized by Subsection 19-1-404(1)(b)(iii).

(4) The maximum amount that may be approved by the Department for a grant is \$100,000; the minimum amount that may be approved is \$5,000.

(5) Awards for applicants for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-9. Loan Program Limitations.

(1) Loan application shall not be approved if:

(a) awarding a loan to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a loan to an applicant would result in the fund balance being less than zero;

(e) the vehicle purchased with loan funds is an electric-hybrid vehicle;

(f) the OEM vehicle purchased with the loan funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant;

(g) the amount of a loan for any vehicle will exceed the provisions in 19-1-403(2)(b) minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009; or

(h) the amount to be loaned for the purchase of vehicle refueling equipment will exceed the provisions in Subsection 19-1-403(2)(d)(ii).

(2) The total combined loans approved annually shall not exceed \$250,000.

(3) The maximum amount that may be approved by the Department for a loan is \$100,000; the minimum amount that may be approved is \$5,000.

(4) Awards for applicants applying for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-10. Servicing the Loans and Loan Repayment.

(1) Loan repayment schedules shall:

(a) not exceed ten years, as required by Subsection 19-1-404(2)(b);

(b) be based on the financial situation and income circumstances of each borrower;

(c) be amortized with equal payment amounts;

(d) be of such amount to pay all interest and principal in full; and

(e) consider projected savings from use of the clean fuel vehicle as required by Subsection 19-1-404(2)(a). In determining projected savings, the Department may use all current and relevant market cost information.

(2) The initial installment payment is due on a date established by the Department.

(3) Subsequent installment payments are due:

(a) on the first day of each month for private sector businesses; or

(b) as determined by the Department for government entities.

(4) A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(5) Loans made from the fund for a government vehicle shall be made with no interest rate as required by Subsection 19-1-404(2)(d).

(6) Loans made from the fund for a private sector vehicle shall be made at an interest rate provided by Subsection 19-1-404(2)(c).

(7) Any changes in interest rates, re-negotiation of contract terms or elimination of debt must receive approval by the Department.

(8) Loan payments received shall be applied first to penalty, next to interest, and then to principal.

(9) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(10) Penalties for late loan payments shall be:

(a) ten percent of the payment due;

(b) assessed and payable on payments received by the Department more than 15 days after the due date;

(c) assessed only once per scheduled payment; and

(d) noticed to the borrower with the amounts of penalty and the total payment due.

(11) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Department by methods other than the U.S. Postal Service.

(12) If a loan payment check is returned due to insufficient

funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(13) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R305-4-11. Recovering on Defaulted Loans.

(1) Loans may be considered in default when three consecutive payments are past due by 30 days or more.

(2) If the loan is determined to be in default under R305-4-11(1), the Department or Division of Finance may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(3) The Department or Division of Finance need not give notice of default prior to declaring the full amount due and payable.

(4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

R305-4-12. Review.

The Department reserves the right to review all data and applicants for continued compliance with this rule during the period the approved applicant has an outstanding loan obligation. The Department further reserves the right to request supplemental information it may deem necessary from an applicant in order to effectively administer the program and this rule.

R305-4-13. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for or obligation to the program cannot be held liable for injury or damage to persons, vehicles or other property caused by or involved with any equipment or vehicle purchased or converted to use a clean fuel or retrofitted in this program.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles
December 19, 2013
Notice of Continuation July 15, 2013

19-1-401

R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-1. Incorporation by Reference.**

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate

Matter, as most recently amended by the Utah Air Quality Board on December 4, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on May 4, 2011, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII,

Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on April 6, 2011, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, PM10, PM2.5, ozone
December 5, 2013 19-2-104(3)(e)
Notice of Continuation February 1, 2012**

R307. Environmental Quality, Air Quality.**R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.****R307-121-1. Authorization and Purpose.**

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase, in accordance with 59-7-605(3) or 59-10-1009(3), to the director for an OEM vehicle or the conversion of a motor vehicle or special mobile equipment for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

R307-121-2. Definitions.

The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package that may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(g) and 59-10-1009(1)(g).

"Qualifying electric or hybrid vehicle" means qualifying electric or hybrid vehicle as defined in 59-7-605(1)(h) or 59-10-1009(1)(h).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective January 3, 2012.

R307-121-3. Proof of Purchase to Demonstrate Eligibility for OEM Natural Gas Vehicles.

To demonstrate that an OEM natural gas motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM natural gas vehicle, or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the vehicle identification number (VIN), the technician's ASE or CSA America certification number, and states that the motor vehicle is an eligible OEM vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle; and

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

R307-121-4. Proof of Purchase to Demonstrate Eligibility for Qualifying Electric or Hybrid Vehicles.

To demonstrate that a motor vehicle is a qualifying electric or hybrid vehicle, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the director:

(1) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the qualifying electric or hybrid vehicle, the VIN, purchase date, and price of the motor vehicle;

(3) the underhood identification number or engine group of the motor vehicle; and

(4) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

R307-121-5. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to a Clean Fuel.

To demonstrate that a conversion of a motor vehicle to be fueled by a clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:

(1) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit; the name, address, and phone number of the person that converted the motor vehicle to run on a clean fuel; the VIN; the date of conversion; and the price of the conversion equipment installed on the motor vehicle; and

(2) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

R307-121-6. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:

(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed; and

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the serial number, the date of conversion, and the price of the conversion equipment installed on the special mobile equipment.

KEY: air pollution, alternative fuels, tax credits, motor vehicles**January 1, 2014****Notice of Continuation January 23, 2012****19-2-104****19-1-402****59-7-605****59-10-1009**

R307. Environmental Quality, Air Quality.**R307-123. General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program.****R307-123-1. Authorization and Purpose.**

(1) This rule is authorized by Section 19-1-405, which establishes criteria and definitions used to determine eligibility for use of the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.

(2) R307-123 establishes procedures to provide proof of purchase to the Board for an OEM vehicle, or the conversion or retrofit of a vehicle for which a grant or loan made with the monies available in the Fund is allowed under Subsection 19-1-403(2)(a).

(3) Eligible technologies are required to meet the criteria and follow the procedures established in R305-4.

R307-123-2. Definitions.

Definitions. The following additional definitions apply to R307-123.

"Certified by the director" means that:

(1) A motor vehicle on which conversion equipment has been installed meets the criteria in Subsection 19-1-405(1)(a) and demonstrates a reduction in emissions as defined in Subsection 19-1-405(2); or

(2) A motor vehicle on which a retrofit has been installed meets the following criteria:

(a) the motor vehicle's emissions of regulated pollutants, when operating with the retrofit equipment, is less than the emissions were before the installation of the retrofit equipment; and

(b) a reduction in emissions under Subsection R307-123-2(2)(a) is demonstrated by:

(i) certification of the retrofit by the federal EPA or by a state whose certification standards are recognized by the Board; or

(ii) any other test or standard recognized by the Board.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

"Retrofit equipment" means a diesel oxidation catalyst, a diesel particulate filter, or a closed crankcase filtration system, that has been approved for use in engine retrofit programs by the federal EPA or by a state whose testing protocols are recognized by the Board.

R307-123-3. Demonstration of Eligibility for OEM Vehicles.

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1)(a) A copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle; or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number (VIN) and states that the vehicle is an OEM vehicle;

(2) An original or copy of the purchase order, customer invoice, or receipt including the VIN; and

(3) A copy of the current Utah vehicle registration.

R307-123-4. Demonstration of Eligibility for Vehicles Converted to Natural Gas or Propane.

To demonstrate that a conversion of a motor vehicle fueled by natural gas or propane is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) a copy of the vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program; or

(b) in all other areas of the state, a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration, which shows that the vehicle is registered in the applicant's name.

R307-123-5. Demonstration of Eligibility for Vehicles Converted to Electricity.

To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4) each of the following:

(a) the conversion equipment manufacturer;

(b) the conversion equipment model number;

(c) the date of the conversion; and

(d) the name, address, and phone number of the person that converted the motor vehicle;

(5) an original or copy of the purchase order, customer invoice, or receipt;

(6) a copy of the current Utah vehicle registration; and

(7) a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

R307-123-6. Demonstration of Eligibility for Retrofitted Vehicles.

To demonstrate that a retrofit of a motor vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) each of the following:

(a) the retrofit type;

(b) the retrofit equipment manufacturer;

- (c) the retrofit equipment model number;
- (d) the date of the retrofit; and
- (e) the name, address, and phone number of the person that retrofitted the vehicle;
- (3) proof that the retrofit is certified by the director;
- (4) proof that the vehicle condition prior to retrofit is compliant with the retrofit's certification criteria;
- (5) an original or copy of the purchase order, customer invoice, or receipt; and
- (6) a copy of the current Utah vehicle registration.

R307-123-7. Applicability.

Provisions found in sections R307-121-5(6) and R307-121-6(3)(c) shall apply to all conversions as of April 8, 2011.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles

December 5, 2013

19-2-104

Notice of Continuation August 8, 2013

19-1-401

59-7-605

59-10-1009

R307. Environmental Quality, Air Quality.**R307-350. Miscellaneous Metal Parts and Products Coatings.****R307-350-1. Purpose.**

The purpose of R307-350 is to limit volatile organic compound (VOC) emissions from miscellaneous metal parts and products coating operations.

R307-350-2. Applicability.

(1) R307-350 applies to sources located in Cache, Davis, Salt Lake, Utah and Weber counties where the potential to emit VOC emissions from all miscellaneous metal product parts surface coating operations, including related cleaning activities, is 2.7 tons per year or more.

(2) In Box Elder and Tooele counties, R307-350 applies to the following sources:

(a) Existing sources as of February 1, 2013, with the potential to emit 5 tons per year or more of VOC, including related cleaning activities; and

(b) New sources as of February 1, 2013, that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) R307-350 applies to, but is not limited to, the following industries:

(a) Large farm machinery (harvesting, fertilizing, planting, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.)

(c) Small appliance (fans, mixers, blenders, crock pots, vacuum cleaners, etc.);

(d) Commercial machinery (computers, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, trailer frames, etc.); and

(g) Any other industrial category that coats metal parts or products under the standard Industrial Classification Code of major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectric machinery), major group 36 (electrical machinery), major group 37 (transportation equipment) major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

R307-350-3. Exemptions.

(1) The requirements of R307-350 do not apply to the following:

(a) The surface coating of automobiles and light-duty trucks;

(b) Flat metal sheets and strips in the form of rolls or coils;

(c) Surface coating of aerospace vehicles and components;

(d) Automobile refinishing;

(e) The exterior of marine vessels;

(f) Customized top coating of automobiles and trucks if production is less than 35 vehicles per day;

(g) Military munitions manufactured by or for the Armed Forces of the United States;

(h) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces; or

(i) Stripping of cured coatings and adhesives.

(2) The requirements of R307-350-5 do not apply to the following:

(a) Stencil coatings;

(b) Safety-indicating coatings;

(c) Solid-film lubricants;

(d) Electric-insulating and thermal-conducting coatings;

(e) Magnetic data storage disk coatings; or

(f) Plastic extruded onto metal parts to form a coating.

(3) The requirements of R307-350-6 do not apply to the following:

(a) Touch-up coatings;

(b) Repair coatings; or

(c) Textured finishes.

R307-350-4. Definitions.

The following additional definitions apply to R307-350:

"Aerospace vehicles and component" means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets and space vehicles.

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Camouflage coating" means coatings that are used, principally by the military, to conceal equipment from detection.

"Coating" means a material applied to a substrate for decorative, protective, or functional purposes.

(1) Such materials include, but are not limited to, paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants.

(2) Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances, or paper film or plastic film which may be pre-coated with an adhesive by the film manufacturer, are not considered coatings.

"Coating application System" means all operations and equipment that applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash off areas, air dryers and ovens.

"Cured coating or adhesive" means a coating or adhesive, which is dry to the touch.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Dip coating" means a method of applying coatings to a substrate by submersion into and removal from a coating bath.

"Electric-insulating varnish" means a non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

"Electric-insulating and thermal-conducting" means a coating that displays an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Electrostatic application" means a method of applying coating particles or coating droplets to a grounded substrate by electrically charging them.

"Etching filler" mean a coating that contains less than 23% solids by weight and at least 0.5% acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

"Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material (ASTM) Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Flow coat" means a non-atomized technique of applying coatings to a substrate with a fluid nozzle in a fan pattern with no air supplied to the nozzle.

"Heat-resistant coating" means a coating that must

withstand a temperature of at least 400 degrees Fahrenheit during normal use.

"High-performance architectural coating" means a coating used to protect architectural subsections and which meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 605.2-1980.

"High-temperature coating" means a coating that is certified to with-stand a temperature of 1,000 degrees Fahrenheit for 24 hours.

"High-volume, low-pressure (HVLP) spray" means a coating application system which is designed to be operated and which is operated between 0.1 and 10 pounds per square inch gauge (psig) air pressure, measured dynamically at the center of the air cap and the air horns.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating, applied.

"Military specification coating" means a coating applied to metal parts and products and which has a formulation approved by a United States military agency for use on military equipment.

"Mold-seal coating" means the initial coating applied to a new mold or repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

"Pan backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure or their appurtenances including, but not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, and large fixed stationary tools.

"Pretreatment coating" means a coating which contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Silicone release coating" means any coating which contains silicone resin and is intended to prevent food from sticking to metal surfaces.

"Solar-absorbent coating" means a coating which has as its prime purpose the absorption of solar radiation.

"Solid-film lubricant" means a very thin coating consisting of a binder system containing as its chief pigment material one or more of molybdenum disulfide, graphite, polytetrafluoroethylene (PTFE) or other solids that act as a dry lubricant between faying surfaces.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying

letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating" means the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to the metal film.

R307-350-5. Emission Standards.

(1) Each owner or operator shall not apply coatings with a VOC content in excess of the amounts specified in Table 1 or shall use an add-on control device as specified in R307-350-8.

TABLE 1

METAL PARTS AND PRODUCTS VOC CONTENT LIMITS
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC)), as applied)

COATING CATEGORY	VOC CONTENT LIMIT	
	Air Dried	Baked
General One Component	2.8	2.3
General Multi Component	2.8	2.3
Camouflage	3.5	3.5
Electric-Insulating varnish	3.5	3.5
Etching Filler	3.5	3.5
Extreme High-Gloss	3.5	3.0
Extreme Performance	3.5	3.0
Heat-Resistant	3.5	3.0
High Performance architectural	6.2	6.2
High Temperature	3.5	3.5
Metallic	3.5	3.5
Military Specification	2.8	2.3
Mold-Seal	3.5	3.5
Pan Backing	3.5	3.5
Prefabricated Architectural Multi-Component	3.5	2.3
Prefabricated Architectural One-Component	3.5	2.3
Pretreatment Coatings	3.5	3.5
Repair and Touch Up	3.5	3.0
Silicone Release	3.5	3.5
Solar-Absorbent	3.5	3.0
Vacuum-Metalizing	3.5	3.5
Drum Coating, New, Exterior	2.8	2.8
Drum Coating, New, Interior	3.5	3.5
Drum Coating, Reconditioned, Exterior	3.5	3.5
Drum Coating, Reconditioned, Interior	4.2	4.2

(2) If more than one content limit indicated in this section applies to a specific coating, then the most stringent content

limit shall apply.

R307-350-6. Application Methods.

No owner or operator of a facility shall apply VOC containing coatings to metal parts and products unless the coating is applied with equipment operated according to the equipment manufacturer specifications, and by the use of one of the following methods:

- (1) Electrostatic application;
- (2) Flow coat;
- (3) Dip/electrodeposition coat;
- (4) Roll coat;
- (5) High-volume, low-pressure (HVLP) spray;
- (6) Hand Application Methods;
- (7) Airless or air-assisted airless spray may also be use for metal coatings with a viscosity of 15,000 centipoise or greater, as supplied; or
- (8) Another application method capable of achieving transfer efficiency equivalent or better to HVLP spray, as certified by the manufacturer.

R307-350-7. Work Practices and Recordkeeping.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from fugitive type sources. Control techniques and work practices shall include, but are not limited to:

- (a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;
- (b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;
- (c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and
- (d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed container or pipes; and
- (e) Minimizing VOC emission from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(2) All persons shall perform solvent cleaning operations with cleaning material having VOC content of 0.21 pounds per gallon or less.

(3) All sources subject to R307-350 shall maintain records demonstrating compliance with all provisions of R307-350 on an annual basis.

(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.

(b) These records shall be available to the director upon request.

R307-350-8. Optional Add-On Controls.

(1) The owner or operator may install and maintain an incinerator, carbon adsorption, or any other add-on emission control device, provided that the emission control device will attain at least 90% efficiency performance.

(2) The owner or operator of a control device shall provide documentation that the emission control system will attain the requirements of R307-350-8.

(3) Emission control systems shall be operated and maintained in accordance with the manufacturer recommendations. The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-350-9. Compliance Schedule.

All sources shall be in compliance with the requirements of R307-350 by January 1, 2014.

**KEY: air pollution, emission controls, coatings, miscellaneous metal parts
December 3, 2013**

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.****R307-403-1. Purpose and Definitions.**

(1) Purpose. This rule implements the federal nonattainment area permitting program for major sources as required by 40 CFR 51.165. In addition, the rule contains new source review provisions for some non-major sources in PM10 nonattainment areas. This rule supplements, but does not replace, the permitting requirements of R307-401.

(2) Unless otherwise specified, all references to 40 CFR in R307-403 shall mean the version that is in effect on July 1, 2012.

(3) Except as provided in R307-403-1(4), the definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference.

(4)(a) "Reviewing authority" means the director.

(b) In the definition of "significant" in 40 CFR 51.165(a)(1)(x) add the following text at the end of the pollutant emission rate for PM2.5: "; and in the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345, 40 tpy of volatile organic compounds."

(c) In the definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxvii) the following subparagraph is added to 51.165(a)(1)(xxvii)(4): "(i) Volatile organic compounds are precursors to PM2.5 and ammonia is not a precursor to PM2.5 in the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345."

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition of "major modification" in 40 CFR 51.165(a)(1)(v)(C), the second sentence in subparagraph (1);

(ii) the definition of "process unit" in 40 CFR 51.165(a)(1)(xliii);

(iii) the definition of "functionally equivalent component" in 40 CFR 51.165(a)(1)(xliv);

(iv) the definition of "fixed capital cost" in 40 CFR 51.165(a)(1)(xlv); and

(v) the definition of "total capital investment" in 40 CFR 51.165(a)(1)(xlvi).

R307-403-2. Applicability.

(1) R307-403 applies to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(a) Except as otherwise provided in paragraph R307-403-2(2), and consistent with the definition of major modification contained in 40 CFR 51.165(a)(1)(v)(A), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in 40 CFR 51.165(a)(1)(xxvii)), and a significant net emissions increase (as defined in 40 CFR 51.165(a)(1)(vi) and (x)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs R307-403-2(c) through (e). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e.,

the second step of the process) is contained in the definition in 40 CFR 51.165(a)(1)(vi). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 40 CFR 51.165(a)(1)(xxviii)) and the baseline actual emissions (as defined in 40 CFR 51.165(a)(1)(xxxv)(A) and (B), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(d) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 40 CFR 51.165(a)(1)(iii)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in 40 CFR 51.165(a)(1)(xxxv)(C)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(e) Reserved.

(f) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in R307-403-2(1)(c) through (d) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(2) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under R307-403-11.

(3) Reserved.

(4) Reserved.

(5)(a) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the state implementation plan and any other requirements under local, state or federal law.

(b) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of R307-403 shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(6) The provisions of R307-403-2(6)(a) through (f) apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any

regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under 40 CFR 51.165(a)(1)(xxviii)(B)(3) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in R307-403-2(6)(a) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph R307-403-2(6)(a)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph R307-403-2(6)(c) setting out the unit's annual emissions during the year that preceded submission of the report.

(e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph R307-403-2(6)(a), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph R307-403-2(6)(c), by a significant amount (as defined in 40 CFR 51.165(a)(1)(x)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph R307-403-2(6)(c). Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph R307-403-2(6)(c); and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(f) A "reasonable possibility" under (R307-403-2(6)) occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in 40 CFR 51.165(a)(1)(xxvii)(without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under 40 CFR 51.165(a)(1)(xxviii)(B)(3), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph 40 CFR 51.165(a)(1)(xxvii) without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of paragraph R307-403-2(6)(f)(i), then provisions R307-403-2(6)(b) through (e) do not apply to the project.

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant

to paragraph R307-403-2(6) above available for review upon a request for inspection by the director or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(8) The requirements of R307-403 applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the EPA Administrator has granted a nitrogen oxides waiver applying the standards set forth under section 182(f) of the Clean Air Act and the waiver continues to apply.

(9) Reserved.

(10) The requirements of R307-403 applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

(11) Reserved.

(12) R307-403 applies to any major source or major modification that is located outside a nonattainment area and is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Clean Air Act and that causes the significant increments in R307-403-3(1) to be exceeded in the nonattainment area.

(12) R307-403-5 applies to any new or modified source in a PM₁₀ nonattainment area.

R307-403-3. Review of Major Sources of Air Quality Impact.

Every major new source or major modification must be reviewed by the director 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 director 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 director 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 director 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 director 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 director 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.

R307-403-10. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment area or which would impact a nonattainment area must, in addition to the requirements in R307-403, 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 the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The director shall review the analysis. The analysis and the director'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.

R307-403-11. Actuals PALS.

The provisions of 40 CFR 51.165(f)(1) through (14) are hereby incorporated by reference.

KEY: air quality, nonattainment, offset

December 5, 2013

19-2-104

Notice of Continuation June 6, 2012

19-2-108

R382. Health, Children's Health Insurance Program.**R382-10. Eligibility.****R382-10-1. Authority.**

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this rule is to set forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).

R382-10-2. Definitions.

(1) The Department adopts and incorporates by reference the definitions found in Sections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2013.

(2) The Department adopts the definitions in Section R382-1-2. In addition, the Department adopts the following definitions:

(a) "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.

(b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" (CHIP) means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

(e) "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.

(f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(g) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2(9).

(h) "Federally Facilitated Marketplace" (FFM) means the entity individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid and CHIP.

(i) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(j) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(k) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(l) "Modified Adjusted Gross Income" (MAGI) means the income determined using the methodology defined in 42 CFR 435.603(e).

(m) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

(n) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(o) "Review month" means the last month of the eligibility certification period for an enrollee during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

(p) "Utah's Premium Partnership for Health Insurance" or "UPPP" means the program described in Rule R414-320.

(q) "Verification" means the proof needed to determine whether a child meets the eligibility criteria to be enrolled in the program. Verification may include documents in paper format,

electronic records from computer match systems, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent, legal guardian or an adult who assumes responsibility for the care or supervision of a child who is under 19 years of age may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(2) If the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the eligibility agency.

(3) A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but cannot make a choice either in writing or orally in the presence of a witness.

(4) Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who assumes responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who assumes responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(5) The eligibility agency shall consider notice to the parent, legal guardian, designated representative, or adult who assumes responsibility for the care or supervision of a child to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child received CHIP coverage during a period when the child was not eligible for CHIP, the parent or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. Reportable changes include:

(a) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage.

(b) An enrollee leaves the household or dies.

(c) An enrollee or the household moves out of state.

(d) Change of address of an enrollee or the household.

(e) An enrollee enters a public institution or an institution for mental diseases.

(7) An applicant and enrollee may review the information

that the eligibility agency uses to determine eligibility.

(8) An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Section R414-301-6 and Section R414-301-7.

(9) An enrollee in CHIP must pay quarterly premiums, co-payments, or co-insurance amounts to providers for medical services that the enrollee receives under CHIP.

R382-10-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.

(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.

(3) The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(4) The Department adopts and incorporates by reference 42 CFR 457.348, 457.350, and 457.380, October 1, 2012 ed.

(5) The Department shall enter into an agreement with the Centers for Medicare and Medicaid Services (CMS) to allow the FFM to screen applications and reviews submitted through the FFM for CHIP eligibility.

(a) The agreement must provide for the exchange of file data and eligibility status information between the Department and the FFM as required to determine eligibility and enrollment in insurance affordability programs, and eligibility for advance premium tax credits and reduced cost sharing.

(b) The agreement applies to agencies under contract with the Department to provide CHIP eligibility determination services.

(6) The Department and the eligibility agency shall release information to the Title IV-D agency and Social Security Administration to determine benefits.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in CHIP, a child must be a citizen or national of the United States (U.S.) or a qualified alien.

(2) The provisions of Section R414-302-3 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

R382-10-7. Utah Residence.

(1) The Department adopts and incorporates by reference, 42 CFR 457.320(d), October 1, 2012 ed. A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian or Alaska Native child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Compilation of Social Security Laws are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The eligibility agency may request an applicant to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340(b), October 1, 2012 ed., which is incorporated by reference.

(2) The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility for failure to provide an SSN.

(4) The Department may assign a unique CHIP identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b) of the Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for CHIP assistance.

(a) A child who is covered under health insurance that does not provide coverage in the State of Utah is eligible for enrollment.

(b) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the countable MAGI-based income for the individual, is not eligible for CHIP. The child is considered to have access to coverage even when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(3) An eligible child who has access to an employer-sponsored health plan may choose to enroll in either CHIP or the employer-sponsored health plan.

(a) If the child chooses to enroll in the employer-sponsored health plan, the child may enroll in and receive premium reimbursement through the UPP program if enrollment is not closed. The health plan must meet the following conditions:

(i) The cost of the least expensive plan equals or exceeds 5% of the countable MAGI-based income for the individual; and

(ii) The plan meets the requirements of Subsection R414-320-2(19).

(b) The cost of coverage includes a deductible if the employer plan has a deductible that must be met before the plan will pay any claims. For a dependent child, if the employee must enroll to enroll the dependent child, the cost of coverage will include the cost to enroll the employee and the dependent child.

(c) If the child enrolls in the employer-sponsored health plan or COBRA coverage and UPP, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP. If the employer-sponsored health plan includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement from UPP of up to \$20 per month, or may choose not to enroll the child in the dental plan and receive dental-only benefits through CHIP.

(d) A child who chooses to enroll in the employer-sponsored health plan or COBRA coverage and UPP may

discontinue the employer-sponsored health plan or COBRA coverage and switch to CHIP coverage at any time without a 90-day ineligibility period for voluntarily discontinuing health insurance. Eligibility continues through the current certification period without a new eligibility determination.

(4) Subject to the provisions published in 78 FR 42313, which the Department adopts and incorporates by reference, the eligibility agency shall deny eligibility and impose a 90-day waiting period for enrollment under CHIP if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date for enrollment under CHIP. In addition, the agency may not apply a 90-day waiting period in the following situations:

- (a) a non-custodial parent voluntarily terminates coverage;
- (b) the child is voluntarily terminated from insurance that does not provide coverage in Utah;
- (c) the child is voluntarily terminated from a limited health insurance plan;
- (d) a child is terminated from a custodial parent's insurance because ORS reverses the forced enrollment requirement.

(5) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(a) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(b) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny CHIP eligibility.

(6) The Department shall comply with the provisions of enrollment after the waiting period in accordance with 78 FR 42312, which the Department adopts and incorporates by reference.

(7) If an applicant or an applicant's parent voluntarily terminates coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the Health Insurance Pool (HIP), or if an applicant is involuntarily terminated from an employer's plan, the applicant is eligible for CHIP without a 90-day ineligibility period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested have access to or are covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children that the household seeks to enroll or renew in the program.

(11) A recipient must report when a child enrolls in health insurance coverage within ten calendar days of the date of enrollment or the date that benefits are effective, whichever is later. The eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice of the closure. A child may switch to UPP in accordance with Subsection R382-10-10(3) if the change is reported timely. Failure to make a timely report may result in overpayment.

R382-10-11. Household Composition and Income Provisions.

(1) The Department adopts and incorporates by reference, 42 CFR 457.315, October 1, 2012 ed., regarding the household composition and income methodology to determine eligibility for CHIP.

(2) Any individual described in Subsection R382-10-11(1) who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of

application, is part of the household.

(3) The household size includes the number of unborn children that a pregnant household member expects to deliver.

(4) The eligibility agency counts children who are 19 or 20 years old and are full-time students in the household size of individuals whose household size is determined under the non-tax filer rules found in 42 CFR 435.603(f)(3).

(5) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(6) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(7) The eligibility agency counts as income, cash support received from a tax filer who claims the individual as a tax dependent when that dependent is not the spouse or child of the tax filer, but only the amount that exceeds a minimal amount set by the Department.

(8) The eligibility agency determines eligibility by deducting an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age sometime during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child turns 19 years of age is the last month of eligibility for CHIP enrollment.

R382-10-13. Budgeting.

(1) The eligibility agency determines countable household income according to MAGI-based methodology as required by 42 CFR 457.315.

(2) The eligibility agency shall determine a child's eligibility and cost sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income expected to be received or made available to the household during the upcoming eligibility period.

(b) The eligibility agency shall include in its estimate, reasonably predictable income changes such as seasonal income or contract income, to determine the average monthly income expected to be received during the certification period.

(c) The eligibility agency prorates income that is received less often than monthly over the eligibility period to determine an average monthly income.

(3) 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 most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(4) The eligibility agency determines farm and self-employment income by using the individual's recent tax return forms or other verifications the individual can provide. 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 a recent time period during which the individual had farm or self-employment income. The eligibility agency deducts the same expenses from

gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income.

R382-10-14. Assets.

An asset test is not required for CHIP eligibility.

R382-10-15. Application and Eligibility Reviews.

(1) The Department adopts and incorporates by reference 78 FR 42312. The Department also adopts and incorporates by reference 42 CFR 457.330, 457.343, and 457.348, October 1, 2012 ed.

(2) The provisions of Section R414-308-3 apply to applicants for CHIP, except for Subsection R414-308-3(10) and the three months of retroactive coverage.

(3) Individuals can apply without having an interview. The eligibility agency may interview applicants and enrollee's, the parents or spouse, and any adult who assumes responsibility for the care or supervision of the child, when necessary to resolve discrepancies or to gather information that cannot be obtained otherwise.

(4) According to the provisions of Section 2105(a)(4)(F) of the Social Security Act, the Department provides medical assistance during a presumptive eligibility period to a child if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-3;

(b) the child is not enrolled in a health insurance plan; and

(c) the child's household income exceeds the applicable income limit for Medicaid, but does not exceed 200% of the federal poverty level for the applicable household size.

(5) A child determined presumptively eligible is required to file an application for medical assistance with the eligibility agency in accordance with the requirements of Section 1920A of the Social Security Act.

(6) A child may receive medical assistance during only one presumptive eligibility period in any six month period.

(7) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance in accordance with the requirements of 42 CFR 457.343.

(8) If an enrollee fails to respond to a request for information to complete the review during the review month, the agency shall end the enrollee's eligibility effective at the end of the review month and send proper notice to the enrollee.

(a) If the enrollee responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall treat the response as a new application without requiring the enrollee to reapply. The application processing period then applies for this new request for coverage.

(b) If the enrollee is determined eligible based on this reapplication, the new certification period begins the first day of the month in which the enrollee contacts the agency to complete the review if verification is provided within the application processing period. The four day grace period may apply. If the enrollee fails to return verification within the application processing period, or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(9) Except as defined in R382-10-15(8), the enrollee must reapply for CHIP if the enrollee's case is closed for one or more calendar months.

(10) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(11) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of the effective date of an adverse

decision. The enrollee does not owe a premium for the due process month.

(12) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective at the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.

(13) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

(14) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

R382-10-16. Eligibility Decisions.

(1) The Department adopts and incorporates by reference 78 FR 42312, regarding eligibility screening.

(2) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(3) If a child made presumptively eligible files an application for medical assistance in accordance with the requirements of Section 1920A of the Social Security Act, presumptive eligibility continues only until the eligibility agency makes an eligibility decision based on that application. Filing additional applications does not extend the presumptive eligibility period.

(4) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

(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 died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

(6) The eligibility agency shall redetermine eligibility every 12 months.

(7) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(b) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(8) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.

R382-10-17. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions in Subsection R414-308-3(7), the effective date of CHIP enrollment is the first day of the application month.

(2) The presumptive eligibility period begins on the first day of the month in which a child is determined presumptively eligible for CHIP. Coverage cannot begin in a month that the child is otherwise eligible for medical assistance.

(3) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application. During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(4) If a child determined eligible for a presumptive eligibility period files an application in accordance with the requirements of Section 1920A of the Social Security Act and is determined eligible for regular CHIP based on that application, the effective date of CHIP enrollment is the first day of the month of application or the first day of the month in which the presumptive eligibility period began, if later.

(a) The four-day grace period defined in Subsection R382-10-17(3) applies if the applicant meets that criteria and the child was not eligible for any medical assistance during such time period.

(b) Any applicable CHIP premiums apply beginning with the month regular CHIP coverage begins, even if such months are the same months as the CHIP presumptive eligibility period.

(5) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Sections R414-306-6, R382-10-10 and the provisions of Subsection R382-10-17(3).

(6) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month if the review process is completed by the end of the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-18. Enrollment Period.

(1) Subject to the provisions in Subsection R382-10-18(2), a child eligible for CHIP enrollment receives 12 months of coverage that begins with the effective month of enrollment. If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(2) CHIP coverage may end before the end of the 12-month certification period if the child:

(a) turns 19 years of age before the end of the 12-month enrollment period;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) begins to be covered under a group health plan or other health insurance coverage;

(e) enters a public institution or an institution for mental diseases; or

(f) does not pay the quarterly premium.

(3) The presumptive eligibility period ends on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the child's application when that application is made in accordance with the requirements of Section 1920A of the Social Security Act; or

(b) the last day of the month following the month in which a presumptive eligibility period begins if an application for medical assistance is not filed on behalf of the child by the last day of such month.

(4) Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

(5) The agency shall redetermine eligibility if a family reports a decrease in income and requests a redetermination during the certification period. A decrease in the premium is effective as follows:

(a) The premium change is effective the month of report if income decreased that month and the family provides timely verification of income;

(b) The premium change is effective the month following the report month if the decrease in income is for the following month and the family provides timely verification of income;

(c) The premium change is effective the month in which verification of the decrease in income is provided, if the family does not provide timely verification of income.

(6) Failure to make a timely report of a reportable change may result in an overpayment of benefits.

R382-10-19. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian or Alaska Native pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of \$30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of \$75.

(d) The agency shall charge the family the lowest premium amount when the family has two or more children, and those children qualify for different quarterly premium amounts.

(2) The eligibility agency shall end CHIP coverage and

assess a \$15 late fee to a family who does not pay its quarterly premium by the premium due date.

(3) The agency may reinstate coverage if the family pays the premium and the late fee by the last day of the month immediately following the termination.

(4) A child is ineligible for CHIP for three months if CHIP is terminated for failure to pay the quarterly premium. The child must reapply at the end of the three months. If eligible, the agency shall approve eligibility without payment of the past due premiums or late fee.

(5) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(6) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

R382-10-20. Termination and Notice.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or periodic eligibility review.

(2) The eligibility agency shall notify an enrollee in writing ten calendar days before the effective date of an action that adversely affects the enrollee's eligibility.

(3) Notices under Section R382-10-20 shall provide the following information:

- (a) the action to be taken;
 - (b) the reason for the action;
 - (c) the regulations or policy that support the action when the action is a denial, closure or an adverse change to eligibility;
 - (d) the applicant's or enrollee's right to a hearing;
 - (e) how an applicant or enrollee may request a hearing;
- and

(f) the applicant's or enrollee's right to represent himself, use legal counsel, a friend, relative, or other spokesperson.

(4) The eligibility agency need not give ten-day notice of termination if:

- (a) the child is deceased;
- (b) the child moves out-of- state and is not expected to return;
- (c) the child enters a public institution or an institution for mental diseases; or
- (d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

R382-10-21. Case Closure or Withdrawal.

(1) The eligibility agency shall end a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time before the eligibility agency makes a decision on the application.

(2) The eligibility agency shall comply with the requirements of 42 CFR 457.350(i), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

KEY: children's health benefits
January 1, 2014
Notice of Continuation May 9, 2013

26-1-5
26-40

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 December 2, 2013****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-58. Children's Organ Transplants.****R414-58-1. Authority and Purpose.**

(1) Authority for this rule is found in Title 63G, Chapter 3.

(2) The purpose of this rule is to set forth criteria to determine eligibility for and the awarding of financial assistance to children who need organ transplants.

R414-58-2. Definitions.

(1) "Eligible recipient" means a person who is 18 years of age or younger at the time an application for financial assistance is made and who has resided, or whose legal guardian has resided, within the state for at least six months prior to applying for financial assistance.

(2) "Initial Medical Expenses" include assessments and evaluations of prospective organ transplant recipients and potential organ donors, actual surgical costs, post-operative care or treatment, COBRA payments, and spenddowns or other related costs for Medicaid or other public assistance eligibility, but does not include travel and living expenses for recipients or families.

R414-58-3. Allowable Medical Expenses and Organ Transplants.

Eligible recipients may apply for financial assistance for eligible medical expenses for any type of organ transplant. Each recipient shall have a maximum lifetime benefit of \$10,000.

R414-58-4. Determining Eligibility.

Eligibility for awarding financial assistance shall be based on:

- (1) whether the person is an eligible recipient; and
- (2) documentation, through physician assessment and evaluation, of the need for the organ transplant.

R414-58-5. Awarding Financial Assistance to Eligible Recipients.

(1) Prior to awarding financial assistance the committee shall review the recipient's request for assistance to determine:

- (a) the needs of the eligible recipient both physically and financially; and
- (b) the existence of other financial assistance including availability of insurance or other state aid.

(2) Each eligible recipient must apply for applicable Medicaid, Medicaid disability, and Children's Health Insurance Program assistance before the committee agrees to award any financial assistance. This does not preclude the committee from using funds to negotiate with transplant centers or hospitals to place the name of the eligible recipient on a waiting list for an organ transplant.

(3) As part of the review process a legal guardian of the eligible recipient must sign a release to allow all medical records of the child to be released to the Department of Health. The Department of Health shall provide assistance to the committee by determining:

- (a) that the proposed organ transplant is not experimental; and
- (b) the extent of the threat to the child's life without the organ transplant.

(4) In addition, the committee must consider the availability of funds in the Children's Organ Transplant trust account before awarding financial assistance.

R414-58-6. Terms for Repayment of Financial Assistance Loans.

Financial assistance shall be given in the form of an interest free loan. Terms, including amount and time frame for

repayment of loans shall be set forth in a contract as agreed to by both parties.

R414-58-7. Waiver of Loan Repayment.

Applicants may request that all or part of the repayment due under the contract for financial assistance be waived by the committee. As a condition of granting a waiver, the committee shall make a finding that repayment of the financial assistance would impose an undue financial burden on the child.

R414-58-8. Organ Donor Awareness Activities.

The committee shall adopt policies for the award of funds from the Children's Organ Transplant trust account for Organ Donor Awareness Activities.

KEY: organ transplants**February 17, 2000****Notice of Continuation December 2, 2013****26-1-5**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-99. Chiropractic Services.****R414-99-1. Authority and Purpose.**

This rule is authorized under the provisions of 42 CFR 410.21, 42 CFR 433.56 and Utah Code Section 26-18-3. It establishes eligibility and access requirements and establishes the reimbursement methodology for chiropractic services.

R414-99-2. Client Eligibility Requirements.

Chiropractic services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

R414-99-3. Program Access Requirements.

A client must obtain prior authorization from the Medicaid authorization contractor, who either provides or manages all Medicaid chiropractic services statewide. Services requested are justified with sufficient information for approval.

R414-99-4. Service Coverage.

(1) Chiropractic services may be provided when medically necessary and include examination, diagnosis and manual manipulations to influence joint and neurophysiological function of the regions of the spine, including x-rays of the spine.

(2) A client may receive only one treatment per day.

R414-99-5. Reimbursement for Chiropractic Service.

(1) Fees for services for which the Department of Health will pay for chiropractic services 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 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.

(3) The Department pays chiropractic providers through the chiropractic contractor based on a fixed encounter rate per visit.

(4) A recipient must pay a \$1.00 copayment for each chiropractic visit. The Department deducts \$1.00 from the reimbursement paid to the provider for each client visit.

(a) The provider should collect the copayment amount from the recipient.

(5) A Medicaid client who is a child under the age of 20, pregnant, an institutionalized individual, a client whose gross income before exclusions or deductions is below the federal Temporary Assistance to Needy Families standard payment allowance as verified by the eligibility caseworker and clients obtaining services for family planning purposes are exempt from copayment requirements.

KEY: Medicaid, chiropractic services
February 24, 2009
Notice of Continuation December 2, 2013

26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-302. Eligibility Requirements.****R414-302-1. Authority and Purpose.**

This rule is authorized by Section 26-1-5 and Section 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-302-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-302-3. Citizenship and Alienage.

(1) The Department incorporates by reference 42 CFR 435.406 October 1, 2012 ed., which requires applicants and recipients to be United States (U.S.) citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the U.S. before August 22, 1996, may receive full Medicaid, Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the U.S. on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or QI services after five years have passed from the person's date of entry into the U.S.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 211(b)(1) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 211(b)(2) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of the infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for the infant as required under Section 211(b)(3) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10) The Department adopts and incorporates by reference 42 CFR 435.949 and 42 CFR 435.952, October 1, 2012 ed.

(a) The Department shall verify citizenship and immigration status requirements through the Federal Data Services Hub or through other electronic match systems approved by the Secretary.

(b) If the Department cannot verify citizenship or immigration status through an electronic match system or the electronic data is not reasonably compatible with the client statement, the client must provide verification of citizenship and identity as described in 42 CFR 435.407.

R414-302-4. Utah Residence.

(1) The Department adopts and incorporates by reference

42 CFR 435.403, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsection 1902(b) of the Compilation of the Social Security Laws, in effect May 8, 2013.

(2) The Department considers an individual who establishes state residency to be a resident of the state during periods of temporary absence, if the individual intends to return to the state when the purpose for the temporary absence ends.

R414-302-5. Deprivation of Supports.

(1) The Department adopts and incorporates by reference the definition of "dependent child" found in 42 CFR 435.4, October 1, 2012 ed.

(2) A child who lives with two parents is deprived of support if at least one parent is working less than 100 hours a month.

(3) A child is not considered deprived of support if any of the following situations is true:

(a) The parent is absent because of military service;

(b) The parent is absent for employment, schooling, training or another temporary purpose;

(c) The parent will return to live in the home within 30 days from the date of the application;

(d) The parent is the primary child care provider and care is frequent enough that the child is not deprived of support, care and guidance.

(4) A parent is incapacitated if the parent meets one of the following criteria:

(a) The parent receives SSI;

(b) The parent is recognized as 100% disabled by the Veteran's Administration;

(c) The parent is determined disabled by the State Medicaid Disability Office or the Social Security Administration;

(d) The parent provides written documentation completed by a medical professional engaged in the practice of mental health therapy, which states that the parent is incapacitated and the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity substantially reduces the parent's ability to work or care for the child. Full-time employment, however, nullifies the parent's claim of incapacity. The written documentation must be completed by one of the following medical professionals:

(i) Medical Doctor (MD);

(ii) Doctor of Osteopathy (DO);

(iii) Advanced Practice Registered Nurse (APRN);

(iv) Physician Assistant; or

(v) Mental Health Therapist who is either a psychologist, licensed clinical social worker, certified social worker, marriage and family therapist, professional counselor, MD, DO, or APRN.

R414-302-6. Residents of Institutions.

(1) The Department provides Medicaid coverage to individuals who are residents of institutions subject to the limitations related to residents of public institutions, patients in an institution for mental diseases who do not meet the age criteria, and patients in an institution for tuberculosis as defined in 42 CFR 435.1009, October 1, 2012 ed., which is incorporated by reference. The Department also adopts and incorporates by reference the definitions in 42 CFR 435.1010, 2012 ed.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease (IMD) who are ages 21 through

64 as non-residents while on conditional or convalescent leave from the institution. A resident of an IMD who is under 21 years of age, or is under 22 years of age and enters an IMD before reaching 21 years of age, is considered to be a resident while on conditional or convalescent leave from the institution.

(5) For individuals under 22 years of age who become residents of an IMD before reaching 21 years of age, the Department limits Medicaid eligibility to individuals residing in the Utah State Hospital.

R414-302-7. Social Security Numbers.

(1) The Department adopts and incorporates by reference 42 CFR 435.910, October 1, 2012 ed., which requires the social security number (SSN) of each applicant or beneficiary, specifies the exceptions to requiring the SSN, and specifies agency verification responsibilities. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect May 8, 2013, which is incorporated by reference.

(2) Acceptable proof of an SSN is an electronic match, a social security card, or an official document from the Social Security Administration, which identifies the correct number. Acceptable proof of an application for an SSN is a social security receipt that confirms the individual has applied for an SSN.

(3) The Department requires a new proof of application for an SSN at each recertification if the SSN has not previously been provided.

(4) The Department may assign a unique Medicaid identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R414-302-8. Application for Other Possible Benefits.

(1) The Department adopts and incorporates by reference 42 CFR 435.608, October 1, 2012 ed., which requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits.

(2) The Department may not require an applicant for or recipient of medical assistance to apply for an income benefit if the applicant's or recipient's income is not counted for the purpose of determining eligibility for medical assistance for either that individual or any other household member.

(3) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

R414-302-9. Third Party Liability.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2012 ed., on the collection of health insurance information. The Department also adopts and incorporates by reference Section 1915(b) of the Compilation of the Social Security Laws, in effect September 9, 2013.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client uncooperative if the client knowingly withholds third party liability information without good cause.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days

to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-10. Assignment of Rights and Medical Support Enforcement.

The Department adopts and incorporates by reference 42 CFR 433.145 through 433.148, and 435.610, October 1, 2012 ed., which spell out the assignment of rights to the state to collect from liable third parties and to cooperate in establishing paternity and medical support.

R414-302-11. Financial Responsibility.

(1) The Department adopts and incorporates by reference 42 CFR 435.602(a), October 1, 2012 ed., on the financial responsibility of family members.

(2) The Department shall apply the requirements of 42 CFR 435.603 for all individuals eligible for coverage groups subject to the Modified Adjusted Gross Income (MAGI) methodology.

KEY: state residency, citizenship, third party liability, Medicaid

January 1, 2014

Notice of Continuation January 23, 2013

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-303. Coverage Groups.****R414-303-1. Authority and Purpose.**

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the Department adopts and incorporates by reference the following definitions as found in 42 CFR 435.4, October 1, 2012 ed.:

- (a) "Caretaker relative;"
- (b) "Family size;"
- (c) "Modified Adjusted Gross Income (MAGI);"
- (d) "Pregnant woman."

(2) A dependent child who is deprived of support is defined in Section R414-302-5.

(3) The definition of caretaker relative includes individuals of prior generations as designated by the prefix great, or great-great, etc., and children of first cousins.

(a) To qualify for coverage as a non-parent caretaker relative, the non-parent caretaker relative must assume primary responsibility for the dependent child and the child must live with the non-parent caretaker relative or be temporarily absent.

(b) The spouse of the caretaker relative may also qualify for Medicaid coverage.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, October 1, 2012 ed., which are adopted and incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2013, which are adopted and incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2013, which is adopted and incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts and incorporates by reference the disability determination requirements described in 42 CFR 435.541, October 1, 2012 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, April 1, 2012 ed., to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, which then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that

the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual who is denied disability status by the State Medicaid Disability Office requests a fair hearing, the individual may request a reconsideration as part of the fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-7.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department may not delay the individual's fair hearing due to the reconsideration process.

(d) The State Medicaid Disability Office shall notify the individual and the Hearings Office of the reconsideration decision.

(i) If disability status is approved pursuant to the reconsideration, the eligibility agency shall complete the Medicaid eligibility determination for disability Medicaid. The individual may choose whether to pursue or abandon the fair hearing.

(ii) If disability status is denied pursuant to the reconsideration, the fair hearing process will proceed unless the individual chooses to abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the State Medicaid Disability Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verification the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2013, the

eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2013, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2013, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women and Children Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, October 1, 2012 ed., which are adopted and incorporated by reference.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives, whose countable income determined using the MAGI methodology does not exceed the applicable income standard for the individual's family size. The income standards are as follows:

Family Size	Income Standard
1	\$438
2	\$544
3	\$678
4	\$797
5	\$912
6	\$1,012
7	\$1,072
8	\$1,132
9	\$1,196
10	\$1,257
11	\$1,320
12	\$1,382
13	\$1,443
14	\$1,505
15	\$1,569
16	\$1,630

(4) For a family that exceeds 16 persons, add \$62 to the income standard for each additional family member.

(5) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the federal poverty level (FPL).

(6) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(7) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116. The Department elects the income limit of 139% of the FPL to

determine a pregnant woman's eligibility for Medicaid.

(8) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

R414-303-5. Medicaid for Parents and Caretaker Relatives, Pregnant Women, and Children Under Non-MAGI-Based Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.117, 435.139, 435.170 and 435.301 through 435.310, October 1, 2012 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7) in effect January 1, 2013, which are adopted and incorporated by reference.

(2) To qualify for coverage as a medically needy parent or other caretaker relative, the parent or caretaker relative must have a dependent child living with the parent or other caretaker relative.

(a) The parent or other caretaker relative must be determined ineligible for the MAGI-based Parent and Caretaker Relative coverage group.

(b) The parent or other caretaker relative must not have resources in excess of the medically needy resource limit defined in Section R414-305-5.

(3) The income and resources of the non-parent caretaker relative are not counted to determine medically needy eligibility for the dependent child.

(4) To qualify for Child Medically Needy coverage, the dependent child does not have to be deprived of support and does not have to live with a parent or other caretaker relative.

(5) If a child receiving SSI elects to receive Medically-Needy Child Medicaid, the child's SSI income shall be counted with other household income.

(6) The eligibility agency shall determine the countable income of the non-parent caretaker relative and spouse in accordance with Section R414-304-6 and Section R414-304-8.

(a) Countable earned and unearned income of the non-parent caretaker relative and spouse is divided by the number of family members living in the household.

(b) The eligibility agency counts the income attributed to the caretaker relative, and the spouse if the spouse is included in the coverage, to determine eligibility.

(c) The eligibility does not count other family members in the non-parent caretaker relative's household to determine the applicable income limit.

(d) The household size includes the caretaker relative and the spouse if the spouse also wants medical coverage.

(7) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

R414-303-6. 12-Month Transitional Medicaid.

(1) The Department adopts and incorporates by reference Title XIX of the Social Security Act Section 1925 in effect January 1, 2013, to provide 12 months of extended medical assistance when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Section 1931(c)(2) of the Social Security Act.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional

Medicaid.

(b) Children who live with the parent are eligible to receive Transitional Medicaid.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.112 and 435.115(f), (g) and (h), October 1, 2012 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2) in effect January 1, 2013, to provide four months of extended medical assistance to a household when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility for the reasons defined in 42 CFR 435.112 and 435.115.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive Four-Month Transitional Medicaid for the reasons defined in 42 CFR 435.112 and 435.115.

(b) Children who live with the parent are eligible to receive Four-Month Transitional Medicaid.

(2) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(2), October 1, 2012 ed., and Section 1902(a)(10)(A)(i)(IX) of the Social Security Act, effective January 1, 2013.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who age out of foster care. This coverage is called the Former Foster Care Youth. These individuals must be enrolled in Medicaid at the time they age out of foster care.

(a) Coverage is available through the month in which the individual turns 26 years of age.

(b) There is no income or asset test for eligibility under this group.

(4) The Department elects to cover individuals who age out of foster care, are not eligible under the Former Foster Care Youth coverage group, and who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services is the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) When funds are available, an eligible independent foster care adolescent may receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-9. Subsidized Adoptions.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(1), October 1, 2012 ed.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-10. Refugee Medicaid.

(1) The Department adopts and incorporates by reference 45 CFR 400.90 through 400.107 and 45 CFR, Part 401, October 1, 2012 ed., relating to refugee medical assistance.

(2) Child support enforcement rules do not apply.

(3) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(4) Cash assistance payments received by a refugee from a resettlement agency are not counted.

(5) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Presumptive Pregnant Woman and Child Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.1102, October 1, 2012 ed., and also adopts and incorporates by reference 78 FR 42303, in relation to presumptive eligibility for pregnant women and children under 19 years of age.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) The Department provides medical assistance to children under the age of 19 during a period of presumptive eligibility if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-3;

(b) for a child under age 6, the declared household income does not exceed 139% of the federal poverty guideline

applicable to the declared household size;

(c) for a child six through 18 years of age, the declared household income does not exceed 133% of the federal poverty guideline applicable to the declared household size; and

(d) the child is not already covered under Medicaid or CHIP.

(7) A child may receive medical assistance during only one period of presumptive eligibility in any six-month period.

(8) A child determined presumptively eligible may receive presumptive eligibility only through the applicable period or until the end of the month in which the child turns 19, whichever occurs first.

(9) The Department adopts and incorporates by reference 78 FR 42303, which relates to a hospital electing to be a qualified entity to make presumptive eligibility decisions.

(a) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups defined in Section 1920 (pregnant women, former foster care children, parents or caretaker relatives), Section 1920A (children under 19 years of age) and 1920 B (breast and cervical cancer patients but only Centers for Disease Control provider hospitals can do presumptive eligibility for this group) of the Social Security Act, January 1, 2013.

(b) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(c) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

R414-303-12. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2013, which the Department adopts and incorporates by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) The Department provides Medicaid eligibility for services under this program to individuals who are screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) An individual who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the individual has insurance coverage but is subject to a pre-existing condition period that prevents the receipt of treatment for breast or cervical cancer or precancerous condition, the individual is considered to not have other health insurance coverage until the pre-existing condition period ends at which time eligibility for the program ends.

(4) An individual who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) An individual must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for an individual with breast or cervical cancer under Section 1902(a)(10)(A)(ii)(XVIII) ends when treatment is no longer needed for the breast or cervical cancer. At each eligibility review, eligibility workers determine whether

treatment is still needed based on the doctor's statement or report.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

January 1, 2014

Notice of Continuation January 23, 2013

26-18-3

26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-304. Income and Budgeting.****R414-304-1. Authority and Purpose.**

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

R414-304-2. Definitions.

(1) The definitions in Rule R414-1, Rule R414-301, and Rule R414-303 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

(b) "Allocation for a spouse" means an amount of income that is the difference between the Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Basic maintenance standard" or "BMS" means the income level for eligibility for Medicaid coverage of the medically needy based on the number of family members who are counted in the household size.

(d) "Benefit month" means a month or any portion of a month for which an individual is eligible for medical assistance.

(e) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(f) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(g) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(h) "Factoring" means that the eligibility agency calculates the monthly income by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(i) "Family Medicaid" means medical assistance for families caring for dependent children and is a general term used to refer to Medicaid coverage for medically needy parents, caretaker relatives, pregnant women, and children.

(j) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse, the spouse of the client, and the parents of a dependent child.

(k) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(l) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(m) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(n) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(o) "Income anticipating" means using current facts regarding rate of pay and number of working hours, and reasonably expected future income changes, to anticipate future

monthly income.

(p) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(q) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(r) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(s) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed one-third of the SSI federal benefit rate plus \$20.

(t) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(3) The eligibility agency may not count Veteran's Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual makes because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the \$20 general income disregard.

(4) The eligibility agency may only count as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.

(5) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(6) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(7) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-

kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(8) The eligibility agency shall count as income of the child, child support payments received from a parent or guardian for past months or years.

(9) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(10) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(11) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(12) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(13) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(14) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

- (a) tuition;
- (b) fees;
- (c) books;
- (d) equipment;
- (e) special clothing needed for classes;
- (f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and
- (g) child care necessary for school attendance.

(15) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income

to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is

an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(17) The eligibility agency shall deem any unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (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 benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for Medicaid for emergency

services only.

(18) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(19) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(20) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(21) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-4. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, and Appendix to Subpart K of 416, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, effective January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency shall allow the provisions found in Subsection R414-304-3(3) through (14), and (17) through (21).

(3) The eligibility agency shall determine income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(4) For the MWI program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other MWI program eligibility factors are eligible without paying a Medicaid buy-in premium.

(5) The eligibility agency shall determine household size and whose income counts for the MWI program as described below:

(a) If the MWI program individual is an adult and is not living with a spouse, the eligibility agency may only count the income of the individual. The eligibility agency shall include in the household size, any children of the individual who are under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the MWI program individual is living with a spouse,

the eligibility agency shall combine their income before allowing any deductions. The eligibility agency shall include in the household size the spouse and any children of the individual or spouse under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the MWI program individual is a child living with a parent, the eligibility agency shall combine the income of the MWI program individual and the parents before allowing any deductions. The eligibility agency shall include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603, October 1, 2012 ed., which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The eligibility agency shall count children who are under 19 years of age and are full-time students in the household size of individuals whose household size is determined under the non-tax filer rules found in 42 CFR 435.603(f)(3).

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income, cash support received from a tax filer who claims the individual as a tax dependent when that dependent is not the spouse or child of the tax filer, but only the amount that exceeds a minimal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to \$30 a calendar quarter per household member. Any amount that exceeds \$30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for medically needy Medicaid, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct \$30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either \$30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the income by choice, and the client reasonably expects to receive

the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for emergency services only.

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-7. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1110 through 416.1112, April 1, 2012 ed. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the (SSA), the eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self-support goals. This income may include earned and unearned income.

(3) The eligibility agency may not deduct from income expenses relating to the fulfillment of a plan to achieve self-support.

(4) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant.

(5) For aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct \$125 from earned income before it determines contribution towards cost of care.

(6) The eligibility agency shall include capital gains in the gross income from self-employment.

(7) To determine countable net income from self-employment, the eligibility agency shall allow a 40% flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual who has allowable business expenses greater than the 40% flat rate exclusion amount and who also provides verification of the expenses, the eligibility agency shall calculate the self-employment net profit amount by using the deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow deductions for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement; and

(f) work-related personal expenses.

(9) The eligibility agency may deduct net losses of self-

employment from the current tax year from other earned income.

(10) The eligibility agency shall disregard earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude this income for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XIII) and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions from earned income that include insurance premiums, savings, garnishments, or deferred income in the month when the client could receive the funds.

R414-304-8. Earned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811, 435.831, October 1, 2012 ed., and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), October 1, 2012 ed. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count the income of a dependent child if the child is:

- (a) in school or training full-time;
- (b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day and employed less than 100 hours a month; or
- (c) is in a job placement under the federal Workforce Investment Act.

(3) For medically needy Family Medicaid, the eligibility agency shall allow the AFDC \$30 and one-third of earned income deduction if the wage earner receives Parent/Caretaker Relative Medicaid in one of the four previous months and this disregard is not exhausted.

(4) The eligibility agency shall determine countable net income from self-employment by allowing a 40 % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 % flat rate exclusion amount, the eligibility agency shall allow actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(6) For Family Medicaid, the eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month a maximum of \$200 a month in child care costs for each child who is under the age of two and \$175 a month in child care costs for each child who is at least two years of age. The maximum deduction of \$175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of \$160 a month in child care costs for each child who is under the age of two and \$140 a month for each child who is at least two years of age. The maximum deduction of \$140 a month shall also apply to provide

care for an incapacitated adult.

(7) For Family Institutional Medicaid, the eligibility agency shall deduct a maximum of \$160 in child care costs from the earned income of clients who work at least 100 hours in a calendar month. The eligibility agency shall deduct a maximum of \$130 in child care costs from the earned income of clients working less than 100 hours in a calendar month.

(8) The eligibility agency shall exclude earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.301(b)1, 435.308, 435.310 and individuals defined in Title XIX of the Social Security Act Section 1902(e)(1), (7), and Section 1925. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

R414-304-9. Aged, Blind and Disabled Non-Institutional Medicaid and Medically Needy Family, Pregnant Woman and Child Non-Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, October 1, 2012 ed.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the eligibility agency shall deduct from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(3) To determine eligibility for and the amount of a spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The eligibility agency shall also deduct from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(a) The eligibility agency shall deduct the entire payment in the month it is due and may not prorate the amount.

(b) The eligibility agency may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or coverage groups subject to the use of MAGI-based methodologies.

(4) To determine the spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums that the client or a financially responsible family member pays in the application month or during the three-month retroactive period. The eligibility agency shall allow the deduction either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(5) To determine eligibility for medically needy coverage groups, the eligibility agency shall deduct from income medically necessary expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client, a dependent sibling of a dependent client, a deceased spouse, or a deceased dependent child;

(b) Medicaid does not cover the medical bill and it is not payable by a third party;

(c) The medical bill remains unpaid or the client receives and pays for the medical service during the month of application

or during the three months immediately preceding the date of application. The date that the medical service is provided on an unpaid expense is irrelevant if the client still owes the provider for the service. Bills for services that the client receives and pays for during the application month or the three months preceding the date of application can be used as deductions only through the month of application.

(6) The eligibility agency may not allow a medical expense as a deduction more than once.

(7) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(8) The eligibility agency shall deduct medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the eligibility agency shall deduct paid expenses before unpaid expenses.

(9) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The Department may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown when the client assumes responsibility to pay that expense;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client;

(e) The Department may not refund spenddown amounts that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce the refund amount by the amount of any unpaid obligation that the client owes the Department.

(10) For poverty-related coverage groups and coverage groups subject to the MAGI-based methodologies, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct medical costs from income to determine eligibility for poverty-related or MAGI-based medical assistance programs. An individual may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related or MAGI-based medical assistance programs.

(11) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(12) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(13) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(14) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(15) For non-institutional Medicaid programs, the eligibility agency may only deduct medically necessary expenses. The Department determines whether services for institutional care are medically necessary.

(16) The eligibility agency may not require a client to pay a spenddown of less than \$1.

(17) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-10. Medicaid Work Incentive Program Income Deductions.

(1) To determine eligibility for the MWI program, the eligibility agency shall deduct the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) \$20 from unearned income. If there is less than \$20 in unearned income, the eligibility agency shall deduct the balance of the \$20 from earned income;

(b) Impairment-related work expenses;

(c) \$65 plus one-half of the remaining earned income;

(d) A current year loss from a self-employment business can be deducted only from other earned income.

(2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct health insurance premiums and medical costs from income before comparing countable income to the applicable limit.

(3) The eligibility agency shall deduct from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI

buy-in premium.

(4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the eligibility agency. The client may not meet the MWI premium with medical expenses.

(5) The eligibility agency may not require a client to pay a MWI buy-in premium of less than \$1.

R414-304-11. Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the eligibility agency shall deduct from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct health insurance premiums in the month the payment is due. The eligibility agency shall deduct the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(b) The eligibility agency shall deduct from income the portion of a combined premium attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member. The client's portion must be paid from the funds of the institutionalized or waiver-eligible client.

(3) The eligibility agency may only deduct medical expenses from income under the following conditions:

- (a) the client receives the medical service;
- (b) Medicaid or a third party will not pay the medical bill;
- (c) a paid medical bill can only be deducted through the month of payment. No portion of any paid bill can be deducted after the month of payment.

(4) To determine the cost of care contribution for long-term care services, the eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying when the client incurs the expenses for the transfer of assets for less than fair market value. The eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 1917(f) of the Social Security Act in effect January 1, 2013, when the equity value of the individual's home exceeds the limit set by law. The eligibility agency may not deduct the expenses during or after the month that the client receives the services even when the expenses remain unpaid.

(5) The eligibility agency may not allow a medical expense as an income deduction more than once.

(6) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(7) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(8) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid

under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(9) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(10) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(11) The eligibility agency shall require institutionalized clients to pay all countable income remaining after allowable income deductions to the institution in which they reside as their cost of care contribution.

(12) A client who pays a cash spenddown or a cost-of-care amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or cost-of-care paid up to the amount of bills. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The eligibility agency may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown or to reduce his cost-of-care to the institution when the client assumes that payment responsibility;

(d) A refund cannot exceed the actual cash spenddown or cost-of-care amount paid by the client;

(e) The eligibility agency may not refund spenddown or cost-of-care amounts paid by a client based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use these unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce a refund by the amount of any unpaid obligation that the client owes the Department.

(13) The eligibility agency shall deduct a personal needs allowance for residents of medical institutions equal to \$45.

(14) When a doctor verifies that a single person or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the eligibility agency shall deduct a personal needs allowance equal to the BMS for one person defined in Subsection R414-304-13(6), for up to six months to maintain the individual's community residence.

(15) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-12. Budgeting.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.640, October 1, 2012 ed., and 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, October 1, 2012 ed., relating to financial responsibility and budgeting for non-MAGI-based Medicaid coverage groups.

(2) The Department adopts and incorporates by reference, 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2012 ed., relating to household income and budgeting for MAGI-based Medicaid coverage groups.

(3) The eligibility agency shall do prospective budgeting to determine a household's expected monthly income.

(a) The eligibility agency shall include in the best estimate of MAGI-based income, reasonably predictable income changes such as seasonal income or contract income to determine the average monthly income expected to be received during the certification period.

(b) The eligibility agency shall prorate income over the eligibility period to determine an average monthly income.

(4) A best estimate of income based on the best available information is considered an accurate reflection of client income in that month.

(5) The eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility. For individuals eligible under a medically needy coverage group, the best estimate of income is used to determine the individual's spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) For non-MAGI-based coverage groups, the eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI, MWI program, and aged, blind, disabled, and Institutional Medicaid income is counted as it is received. Income that is received weekly or every other week is not factored;

(b) For medically needy Family, Pregnant Woman and Child Medicaid programs, income that is received weekly or every other week is factored.

(8) Lump sums are income in the month received. Lump sum payments can be earned or unearned income.

(9) For non-MAGI-based coverage groups, income paid out under a contract is prorated over the time period the income is intended to cover to determine the countable income for each month. The prorated amount is used instead of actual income that a client receives to determine countable income for a month.

(10) To determine the average monthly income for farm and self-employment income, the eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factors in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income is adjusted during the year when information about changes or expected changes is received by the eligibility agency.

(11) Countable educational income that a client receives other than monthly income is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover those specific months in the retroactive period.

R414-304-13. Income Standards.

(1) The Department adopts and incorporates by reference Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall calculate the aged and disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an aged or disabled person's income exceeds this amount, the Basic Maintenance Standard (BMS) applies unless the disabled individual or a disabled aged individual has earned income. In that case, the income standards of the MWI program apply.

(3) The income standard for the MWI for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the BMS applies.

(a) The eligibility agency shall charge a MWI buy-in premium for the MWI program when the countable income of the eligible individual's or the couple's income exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the eligibility agency shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(4) The income limit for parents and caretaker relatives, pregnant women, and children under the age of 19 are defined in Section R414-303-4.

(5) To determine eligibility and the spenddown amount of individuals under medically needy coverage groups, the BMS applies.

(6) The BMS is as follows:

Household Size	Basic Maintenance Standard (BMS)
1	382
2	468
3	583
4	683

5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-14. Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and Subsections 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall count the following individuals in the BMS for aged, blind and disabled Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for aged, blind and disabled Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals in the household size for the 100% of poverty aged or disabled Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals in the household size for the MWI program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are 18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for aged, blind and disabled non-institutional Medicaid and the spenddown, if any; aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI programs is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on Section R414-304-3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the MWI program is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is included in the BMS, it means that the eligibility agency shall count that family member as part of the household and also count his income and resources to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is included in the household size, it means that the eligibility agency shall count that family member as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income or whether that family member receives medical assistance.

R414-304-15. Medically Needy Family, Pregnant Woman and Child Medicaid Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), October 1, 2012 ed.

(2) If a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the eligibility agency shall include the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers emergency services only under other provisions of Medicaid law.

(3) The eligibility agency may exclude any unemancipated minor child from the Medicaid coverage group, and may exclude an ineligible alien child from the household size at the request of the named relative who is responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size to determine what income limit is applicable to the family. The eligibility agency may not consider income and resources of an excluded child to determine eligibility or spenddown.

(4) The eligibility agency may not include a non-parent caretaker relative in the household size of the minor child.

(5) If anyone in the household is pregnant, the eligibility agency shall include the expected number of unborn children in the household size.

(6) If the parents voluntarily place a child in foster care and in the custody of a state agency, the eligibility agency shall include the parents in the household size.

(7) The eligibility agency may not include parents in the household size who have relinquished their parental rights.

(8) If a court order places a child in the custody of the state and the state temporarily places the child in an institution, the eligibility agency may not include the parents in the household size.

(9) If the eligibility agency includes or counts a person in the household size, that family member is counted as part of the household and his income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level applies to determine eligibility for the client or family.

R414-304-16. Aged, Blind and Disabled Institutional Family Institutional Medicaid Filing Unit.

(1) For aged, blind and disabled institutional Medicaid, the eligibility agency may not use income of the client's parents or the client's spouse to determine eligibility and the

contribution to cost-of-care.

(2) For family institutional Medicaid programs, the Department adopts and incorporates by reference 45 CFR 206.10(a)(1)(vii), October 1, 2012 ed.

(3) The eligibility agency shall determine eligibility and the contribution to cost of care, which may be referred to as a spenddown, using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. The eligibility agency shall end sponsor deeming 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 benefit.

KEY: financial disclosures, income, budgeting
January 1, 2014
Notice of Continuation January 23, 2013

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-305. Resources.****R414-305-1. Purpose and Authority.**

This rule is established under the authority of Section 26-18-3 and establishes the resource provisions for Medicaid eligibility.

R414-305-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) The following definitions apply in this rule:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers, and the cost of opening and closing a grave site.

(b) "Penalty period" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a home and community-based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

R414-305-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.

(1) To determine resource eligibility of an individual on the basis of being aged, blind or disabled, the Department adopts and incorporates by reference 42 CFR 435.840, 435.845, October 1, 2012 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, April 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency applies the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is \$2,000 for a one-person household and \$3,000 for a two-person household.

(4) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is \$15,000. This limit applies whether the household size is one or more than one.

(5) The eligibility agency shall base non-institutional and institutional Medicaid eligibility on all available resources owned by the individual, or considered available to the individual from a spouse or parent. The eligibility agency may not grant eligibility based upon the individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, April 1, 2012 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(6) The eligibility agency may not count any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act. Any money from the resource that is given to the child as unearned income is a countable resource that begins the month after the child receives it.

(7) The eligibility agency shall count the resources of a ward that are controlled by a legal guardian as the ward's resources.

(8) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to

purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(9) If a resource is available, but a legal impediment exists, the eligibility agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource exists:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt as long as the home is the individual's principal place of residence.

(11) For an institutionalized individual, the eligibility agency may not consider a home or life estate to be an exempt resource.

(12) To determine eligibility for nursing facility or other long-term care services, the eligibility agency shall exclude the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(a) the individual intends to return to the home;

(b) the individual's spouse resides in the home;

(c) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(d) a reliant relative of the individual resides in the home.

(13) Even if the conditions in Subsection R414-305-3(12) are met, an individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds \$500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services.

(14) For A, B and D Medicaid, the eligibility agency may not count up to \$6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(15) The eligibility agency may retroactively designate for burial a previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231. The effective date of the exclusion cannot be earlier than the first day of the month after the month in which the funds were designated for burial or intended for burial, were separated from non-burial funds, and the client was eligible for Medicaid. The eligibility agency shall treat the resources as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(16) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(17) The eligibility agency may not count resources of an SSI recipient who has a plan for achieving self-support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self-support goals.

(18) The eligibility agency may not count an irrevocable burial trust as a resource. Nevertheless, if the owner is institutionalized or on home and community-based waiver Medicaid, the value of the trust, which exceeds \$7,000, is considered a transferred resource.

(19) The eligibility agency may not count business resources that are required for employment or self-employment.

(20) For the Medicaid Work Incentive Program, the

eligibility agency may not count the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(21) After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the resources described in Subsection R414-305-3(20) to allow the individual to qualify for other Medicaid programs for the aged, blind or disabled, and not solely the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(22) Assets of 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, are considered available to the alien. The eligibility agency shall stop counting assets from a sponsor when the alien becomes a naturalized United States (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 benefit.

(23) The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(24) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(25) The eligibility agency may not count as a resource, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(26) The eligibility agency may not count certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation; ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(27) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

(28) Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in Subsection R414-305-3(12).

(c) The individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the individual and the current market value of the

property.

(d) The following table lists the life estate figure corresponding to the individual's age. The eligibility agency uses this figure to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049

79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-4. Parents and Caretaker Relatives, Pregnant Woman and Child using MAGI methodology Resource Provisions.

The Department adopts 42 CFR 435.603(g), October 1, 2012 ed., which is incorporated by reference, regarding no resource test for coverage groups subject to MAGI-based methodologies for determining eligibility.

R414-305-5. Resource Provisions for Parents and Caretaker Relatives, Pregnant Woman, and Child Under Non-MAGI-Based Community and Institutional Medicaid.

(1) To determine resource eligibility for an individual for Parents and Caretaker Relatives, Pregnant Woman, and Child non-MAGI-based Medicaid programs, the Department adopts and incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), October 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) The medically needy resource limit is \$2,000 for a one-person household, \$3,000 for a two-person household and \$25 for each additional household member.

(4) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(5) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(6) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal

or informal.

(7) If a resource is available, but a legal impediment exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(8) The eligibility agency shall exclude a maximum of \$1,500 in equity value of one vehicle.

(9) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds \$1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(10) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(11) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(28) shall apply.

(12) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(13) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13) and (28) shall apply to the individual's home or life estate.

(14) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(15) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(16) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(17) The eligibility agency shall exclude as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(18) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to \$1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The client shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest earned on exempt burial funds that is left to accumulate. If an individual uses exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the date that the funds are

withdrawn.

(19) Assets of 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, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets 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 benefit.

(20) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(21) The eligibility agency may not count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(22) The eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(23) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(24) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(25) The eligibility agency may not count as resources certain property and rights of federally-recognized American Indians including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(26) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

R414-305-6. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396r-5 to determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share.

(2) The resource limit for an institutionalized individual is \$2,000.

(3) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-6(4) as of the first continuous period of institutionalization or upon application for Medicaid home and community-based waiver

services. The eligibility agency shall notify the requester of the results of the assessment. The agency may not require the individual to apply for Medicaid or pay a fee for the assessment.

(4) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The eligibility agency shall count the resources for the assessment that include those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(5) The community spouse's assessed share of resources is one-half of the total resources. Nevertheless, the protected resource allowance for the community spouse may be less than the assessed share.

(6) Upon application for Medicaid, the eligibility agency shall set the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The eligibility agency shall set the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions:

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard;

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard;

(iii) The eligibility agency shall use the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the eligibility agency shall apply the income first provisions of 42 U.S.C. 1396r-5(d)(6).

(5) The eligibility agency shall count any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(6) After the eligibility agency establishes eligibility for the institutionalized spouse, the agency shall allow a protected period for the couple to either use excess resources, or change the ownership of resources held jointly or held only in the name of the institutionalized spouse.

(a) The protected period continues until the resources held in the institutionalized spouse's name do not exceed \$2,000, or until the time of the next regularly scheduled eligibility redetermination, whichever occurs first.

(b) The institutionalized individual may do the following:

(i) use resources held in his name for his benefit or for the benefit of his spouse;

(ii) transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit; or

(iii) a combination of both.

(7) The eligibility agency may not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the agency establishes eligibility.

(8) If an individual is otherwise eligible for institutional Medicaid, the eligibility agency may not count the community spouse's resources as available to the institutionalized individual due to an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:

- (a) The individual assigns support rights to the agency;
- (b) The individual cannot get medical care without Medicaid;
- (c) The individual is at risk of death or permanent disability without institutional care.

R414-305-7. Treatment of Trusts.

(1) The eligibility agency shall apply the criteria in Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., to determine the availability of trusts established before August 11, 1993.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable or whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(A) concerning trusts for a Disabled Person under Age 65. These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust that complies with the provisions in Subsection R414-305-7(2) and (4) do not count as available resources.

(a) The individual trust beneficiary must meet the disability criteria found in 42 U.S.C. 1382c(a)(3). The trust must be established and assets transferred to the trust before the disabled individual reaches age 65.

(b) The trust must be established solely for the benefit of the disabled individual by a parent, grandparent, legal guardian of the individual, or the court.

(c) The trust may only contain the assets of the disabled individual. The eligibility agency shall treat any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(d) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(e) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(f) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the

State without requiring the State to take any action except to establish the amount to be repaid.

(g) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(h) The eligibility agency shall continue to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the agency shall treat the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

(i) A trust that provides benefits to other persons is not an individual special needs trust and does not meet the criteria to be excluded from resources.

(j) A corporate trustee may charge a reasonable fee for services.

(k) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(l) Additional trusts cannot be created within the special needs trust.

(3) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(C) concerning pooled trusts for disabled individuals. A pooled trust is a specific trust for disabled individuals that meets all of the following conditions:

(a) The trust contains the assets of disabled individuals;

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents;

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the eligibility agency shall treat the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50% of the amount

remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-7(2) and (3):

(a) No expenditures may be made after the death of the beneficiary before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust;

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share;

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the eligibility agency;

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual;

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary;

(ii) The eligibility agency shall treat any provision or action that does or will divert payments or principal from the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary;

(e) The eligibility agency shall count cash distributions from the trust as income in the month received;

(f) The eligibility agency shall count retained distributed amounts as resources beginning the month which follows the month that the amounts are distributed. The agency shall apply the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ten days of receipt. The agency shall exclude assets purchased with trust funds if the trust retains ownership;

(g) The eligibility agency shall count distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid;

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition;

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in

the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The eligibility agency may require a statement of medical need for the services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the eligibility agency may require verification of the person's ability to carry out the needed services;

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically necessary attendant;

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the eligibility agency upon request or upon any change of trustee.

(5) The eligibility agency may not count assets held in a pooled trust that comply with the provisions in Subsection R414-305-7(3) and (4) as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community-based services under one of the waiver programs.

R414-305-8. Transfer of Resources for Non-Institutional Medicaid Coverage Groups.

The eligibility agency may not impose a penalty period for the transfer of resources to determine eligibility for individuals who are not institutionalized or eligible for home and community-based services waivers.

R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community Based Services Waivers.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a penalty period applies for a transfer of assets for less than fair market value.

(2) If an individual or the individual's spouse transfers the home or life estate or any other asset on or after the look-back date based on an application for long-term care Medicaid services, the transfer requirements of 42 U.S.C. 1396p(c) and (e) apply.

(3) If an individual or the individual's spouse transfers assets in more than one month after February 7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the penalty period. The eligibility agency shall apply partial month penalty periods for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(4) In accordance with 42 U.S.C. 1396p(c), the penalty period for a transfer of assets that occurs after February 7, 2006, begins the first day of the month during or after which assets are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise receive institutional level care based on an approved application for Medicaid, but for the application of the penalty period, whichever is later.

(a) If a previous penalty period is in effect on the date that the new penalty period begins, the new penalty period begins

immediately after the previous one ends.

(b) The eligibility agency shall apply penalty periods consecutively so that they do not overlap.

(5) If assets are transferred during any penalty period, the penalty period for those transfers does not begin until the previous penalty period expires.

(6) If a transfer occurs, or the eligibility agency discovers an unreported transfer after the agency approves an individual for Medicaid for nursing home or home and community-based services, the penalty period shall begin on the first day of the month after the month that the individual transfers the asset.

(7) The statewide average private-pay rate for nursing home care in Utah that the eligibility agency shall use to calculate the penalty period for transfers is \$4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred may only be used to benefit the spouse, disabled child, or disabled individual, and must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in the agreement that benefit another person at any time nullify the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4) that meets the criteria in Section R414-305-7 does not have to meet the actuarially sound test.

(9) The eligibility agency may not impose a penalty period if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the State;

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) When the individual dies, the State shall distribute the benefits of the policy as follows:

(i) The State may distribute up to \$7,000 to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the individual cannot exceed \$7,000;

(ii) The State may distribute an amount that does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the individual;

(iii) The State may distribute to a remainder beneficiary named by the individual any amount that remains after payments are made as defined in Subsection R414-305-9(9)(d)(i) and Subsection R414-305-9(9)(d)(ii).

(10) If the eligibility agency determines that a penalty period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the Department may not pay the costs for nursing home or other long-term care services during the penalty period. The notice shall include when the penalty period begins and ends.

(a) The individual may request a waiver of the penalty period based on undue hardship.

(b) The individual must send a written request for a waiver of the penalty period due to undue hardship to the eligibility agency within 30 days of the date printed on the penalty period notice.

(c) The request must include an explanation of why the individual believes undue hardship exists.

(d) The eligibility agency shall make a decision on the undue hardship request within 30 days of receipt of the request.

(11) An individual who claims an undue hardship as a result of a penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources may not access the asset immediately; however, the eligibility agency shall require the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource;

(i) The agency may determine that it is unreasonable to require the individual to take action if a knowledgeable source confirms that the individual's efforts cannot succeed;

(ii) The agency may determine that it is unreasonable to require the individual to take action based on evidence that the individual's action is more costly than the value of the resource; and

(b) Application of the penalty period for a transfer of resources deprives the individual of medical care, endangers the individual's life or health, or deprives the individual of food, clothing, shelter, or other necessities of life.

(12) If the eligibility agency waives the penalty period based on undue hardship, the agency shall notify the individual. The Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The eligibility agency shall notify the individual of the date that the individual must provide verifications of the steps taken. The individual must, within the time frames set by the agency, verify to the agency all reasonable actions. The agency shall review the undue hardship waiver and the actions of the individual to try to regain the transferred assets. The time period for the review may not exceed six months. Upon review, the agency shall decide whether:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the agency shall notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps without success, in which case the agency shall notify the individual that it requires no further action. If the individual continues to meet eligibility criteria, the eligibility agency may not apply the penalty period; or

(c) The individual has not taken all reasonable steps, in which case the eligibility agency shall discontinue the undue hardship waiver. The eligibility agency shall then apply the penalty period and the individual is responsible to repay Medicaid for services and benefits that the individual received during the months that the undue hardship waiver was in place.

(13) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the eligibility agency may determine that the individual cannot recover or regain the transferred resource. If the agency decides that the assets cannot be recovered and that applying the penalty period may result in undue hardship, the agency may not apply a penalty period or shall end a penalty period that has already begun.

(14) The eligibility agency shall base its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The agency shall compare the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide whether the financial situation creates an undue hardship. The agency shall send written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision to file a request for a fair hearing.

(15) The eligibility agency shall consider the portion of an irrevocable burial trust that exceeds \$7,000 a transfer of resources. The agency shall deduct the value of any fully paid burial plot from the burial trust first before determining the transferred amount.

R414-305-10. Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, and Qualifying Individual Resource Provisions.

(1) To determine eligibility for Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, and Qualifying Individuals, the eligibility agency shall apply the resource limit defined in 42 U.S.C. Sec.1396d(p)(1)(C).

(2) The eligibility agency shall determine countable resources in accordance with the provisions of Section R414-305-3.

R414-305-11. Treatment of Annuities.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased after February 7, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) apply. The eligibility agency shall treat annuities purchased after February 7, 2006, which do not meet the requirements of 42 U.S.C. 1396p(c), as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-11(4), the eligibility agency shall count annuities in which the individual, the individual's spouse or a minor individual's parent has an interest as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The agency shall presume that a market exists to purchase annuities or the stream of income from annuities, which make them available resources. The individual may rebut the presumption that the annuity may be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annuities or the revenue stream from annuities, in which case, the agency may not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category of Medicaid, the eligibility agency shall exclude an annuity from countable resources in the form of the periodic payment if it meets the following requirements.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes the annuities after February 7, 2006, the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) For family-related medically needy Medicaid programs, the eligibility agency shall count all annuities as resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(6) Annuities purchased on or after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first

position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the eligibility agency that the change in beneficiary has been made by the date requested by the agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the eligibility agency shall apply the penalty period. If the eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the penalty period begins the day after the closure date.

(7) The eligibility agency shall treat an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(8) If a penalty period for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the penalty period for a transfer does not end until the individual completes and verifies the change of beneficiary to the eligibility agency. The eligibility agency may not rescind the penalty period.

(9) If the individual or spouse does not provide all information about annuities for which they have an interest by the requested due date, the eligibility agency shall deny the application. The individual may reapply, but may not protect the original application date.

(10) The issuer of the annuity shall inform the eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity shall also inform the agency if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the agency.

KEY: Medicaid, resources

January 1, 2014

Notice of Continuation January 23, 2013

26-18-3

26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-306. Program Benefits and Date of Eligibility.****R414-306-1. Medicaid Benefits and Coordination with Other Programs.**

(1) The Department provides medical benefits to Medicaid recipients as outlined in Section R414-1-6.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

(4) The Department must coordinate with the Children's Health Insurance Program to assure the enrollment of eligible children.

(5) The Department must coordinate with the Women, Infants and Children Program to provide information to applicants and recipients about the availability of services.

R414-306-2. QMB, SLMB, and QI Benefits.

(1) The Department must provide the services outlined under 42 U.S.C. 1396d(p) and 42 U.S.C. 1396u-3 for Qualified Medicare Beneficiaries.

(2) The Department provides the benefits outlined under 42 U.S.C. 1396d(p)(3)(ii) for Specified Low-Income Medicare Beneficiaries and Qualifying Individuals. Benefits for Qualifying Individuals are subject to the provisions of 42 U.S.C. 1396u-3.

(3) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

R414-306-3. Qualified Medicare Beneficiary Date of Entitlement.

(1) Eligibility for the Qualified Medicare Beneficiary (QMB) program begins the first day of the month after the month the Medicaid eligibility agency determines that the individual is eligible, in accordance with the requirements of 42 U.S.C. 1396a(e)(8).

(2) There is no provision for retroactive QMB assistance.

R414-306-4. Effective Date of Eligibility.

(1) Subject to the exceptions in Subsection R414-306-4(3), eligibility for any Medicaid program, and for the Specified Low-income Medicare Beneficiary (SLMB) or Qualified Individual (QI) programs begins the first day of the application month if the individual is determined to meet the eligibility criteria for that month.

(2) An applicant for Medicaid, SLMB or QI benefits may request medical coverage for the retroactive period. The retroactive period is the three months immediately preceding the month of application.

(a) An applicant may request coverage for one or more months of the retroactive period.

(b) Subject to the exceptions in Subsection R414-306-4(3), eligibility for retroactive medical coverage begins no earlier than the first day of the month that is three months before the application month.

(c) The applicant must receive medical services during the retroactive period and be determined eligible for the month he receives services.

(3) To determine the date eligibility for medical assistance may begin for any month, the following requirements apply:

(a) Eligibility of an individual cannot begin any earlier than the date the individual meets the state residency requirement defined in Section R414-302-4;

(b) Eligibility of a qualified alien subject to the five-year bar on receiving regular Medicaid services cannot begin earlier than the date that is five years after the date the person became

a qualified alien, or the date the five-year bar ends due to other events defined in statute;

(c) Eligibility of a qualified alien not subject to the five-year bar on receiving regular Medicaid services can begin no earlier than the date the individual meets qualified alien status.

(d) An individual who is ineligible for Medicaid while residing in a public institution or an Institution for Mental Disease (IMD) may become eligible on the date the individual is no longer a resident of either one of these institutions. If an individual is under the age of 22 and is a resident of an IMD, the individual remains a resident of the IMD until he is unconditionally released.

(4) If an applicant is not eligible for the application month, but requests retroactive coverage, the agency will determine eligibility for the retroactive period based on the date of that application.

(5) The eligibility agency shall determine retroactive eligibility by using the eligibility criteria in effect during the retroactive month. Modified Adjusted Gross Income (MAGI) methodology is effective only on or after January 1, 2014, and the eligibility agency may not apply MAGI methodology before that date.

(6) The agency may use the same application to determine eligibility for the month following the month of application if the applicant is determined ineligible for both the retroactive period and the application month. In this case, the application date changes to the date eligibility begins. The retroactive period associated with the application changes to the three months preceding the new application date.

(7) The effective date of eligibility is January 1, 2014, for applicants who file for eligibility from October 1, 2013, through December 31, 2013, and are not found eligible using 2013 eligibility criteria, but are found eligible for a coverage group using MAGI methodology.

(8) Medicaid eligibility for certain services begins when the individual meets the following criteria:

(a) Eligibility for coverage of institutional services cannot begin before the date that the individual has been admitted to a medical institution and meets the level of care criteria for admission. The medical institution must provide the required admission verification to the Department within the time limits set by the Department in Rule R414-501. Medicaid eligibility for institutional services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of institutional services.

(b) Eligibility for coverage of home and community-based services under a Medicaid waiver cannot begin before the first day of the month the client is determined by the case management agency to meet the level of care criteria and home and community-based services are scheduled to begin within the month. The case management agency must verify that the individual meets the level of care criteria for waiver services. Medicaid eligibility for waiver services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of waiver services.

(9) An individual determined eligible for QI benefits in a calendar year is eligible to receive those benefits throughout the remainder of the calendar year, if the individual continues to meet the eligibility criteria and the program still exists. Receipt of QI benefits in one calendar year does not entitle the individual to QI benefits in any succeeding year.

(10) After being approved for Medicaid, a client may later request coverage for the retroactive period associated with the approved application if the following criteria are met:

(a) The client did not request retroactive coverage at the time of application; and

(b) The client did not make a decision about eligibility for medical assistance for that retroactive period; and

(c) The client states that he received medical services and

provides verification of his eligibility for the retroactive period.

(11) The Department may not provide retroactive coverage if a client requests coverage for the retroactive period associated with a denied application after the date of denial. The client, however, may reapply and the eligibility agency may consider a new retroactive coverage period based on the new application date.

R414-306-5. Medical Transportation.

(1) The Department provides non-emergency medical transportation as required by 42 CFR 431.53.

(2) The following applies to all forms of non-emergency medical transportation including services provided by a contracted medical transportation provider and reimbursement for use of personal transportation.

(a) Non-emergency medical transportation is limited to transportation expenses to go to and from the nearest appropriate Medicaid provider to obtain a Medicaid covered service that is medically necessary. If the recipient chooses to travel to a Medicaid provider that is not the nearest appropriate provider, reimbursement of mileage is limited to the distance to go to the nearest appropriate provider. The Department will not cover transportation expenses to go to non-Medicaid providers, or to obtain services not covered by the Medicaid plan.

(b) Non-emergency medical transportation is limited to individuals who are covered under the Traditional Medicaid benefit plan. Individuals covered by the Non-Traditional Medicaid plan, the Primary Care Network, the Covered-At-Work program, and Medicare Cost-Sharing programs are not eligible for non-emergency medical transportation.

(c) If transportation is available to a Traditional Medicaid recipient without cost to the recipient, the recipient shall use this transportation. A Traditional Medicaid recipient who needs specialized transportation and who meets the criteria for the Medicaid transportation contractor services found in Subsection R414-306-5(14) may receive transportation from the Medicaid transportation contractor.

(d) A Traditional Medicaid recipient who has access to and is able to use public transportation to get to medical appointments may receive a bus pass upon request. The bus pass may be used to pay the fare for an attendant who accompanies a recipient under age 18 or a recipient who has a medical need for an attendant. A recipient who has access to and is capable of using public paratransit services can request authorization to use such transportation. The recipient must follow procedures and meet criteria required by the paratransit provider.

(e) Transportation for picking up prescriptions is not covered unless en route to or from a medical appointment.

(f) The Department will not provide non-emergency medical transportation to nursing home residents because the nursing home must provide the transportation as part of its contracted rate.

(g) The Department will not provide non-emergency medical transportation to and from mental health appointments for recipients covered by a prepaid Mental Health Plan because the prepaid Mental Health Plan must provide transportation, as part of its contracted rate, to recipients to obtain covered mental health services.

(h) If medical services are not available in-state, a Traditional Medicaid recipient must receive prior authorization from the Department for the services and the transportation. If the services and the transportation are approved, the Department shall determine, at its discretion, the most cost effective and appropriate transportation, and method of payment for the transportation.

(3) If personal transportation is used and it is the most reasonable and economical mode of transportation available, the local office shall reimburse actual mileage at the rate of \$0.18

per mile. The Department may deny reimbursement for multiple trips in a day unless the client can demonstrate why multiple trips were necessary. Total reimbursement for mileage must not exceed \$150.00 a month per household, unless:

(a) an eligibility worker determines that higher reimbursement is necessary because a recipient's medical condition requires frequent travel to a Medicaid provider to obtain Medicaid covered services that are medically necessary; or

(b) an eligibility worker or supervisor determines that higher reimbursement is necessary because a recipient had an unusual medical need in a given month that required frequent or long-distance travel to a Medicaid provider to obtain Medicaid covered services that were medically necessary.

(4) The local office supervisor can authorize advance payment for use of personal transportation, overnight stay costs, or both, if the provider verifies the medical appointment, and the client would be unable to obtain the necessary medical services without an advance. The recipient is responsible to repay an advance if the recipient does not provide verification of travel expenses equal to or greater than the amount of funds advanced within 10 days after returning from the scheduled appointment.

(5) Transportation reimbursement for use of a personal vehicle may be made to the recipient, to a second party, or to the recipient and second party jointly.

(6) If two or more Traditional Medicaid recipients travel together in a personal vehicle, reimbursement shall be made to only one recipient, or to the driver, and only for the actual miles traveled.

(7) If medical services are not available locally, a Traditional Medicaid recipient may be reimbursed for transportation to obtain medical services outside of the recipient's local area. If the closest medical provider is out-of-state, a recipient may be reimbursed for transportation to the out-of-state provider if this travel is more cost effective than traveling to an in-state provider. The medical provider's office must verify that the recipient needs to travel outside the local area for medical services, unless:

(a) there are no Medicaid providers in the local area who can provide the services; or

(b) it is the custom in the local area to obtain medical services outside the local area or in neighboring states.

(8) A Traditional Medicaid recipient who receives medical treatment outside of the recipient's local area may receive reimbursement for lodging costs when staying overnight, if:

(a) the recipient is obtaining a Medicaid covered service that is medically necessary from the nearest Medicaid provider that can treat the recipient's medical condition; and

(b) the recipient must travel over 100 miles to obtain the medical treatment and would not arrive home before 8:00 p.m. due to the drive time;

(c) the recipient must travel over 100 miles to obtain the medical treatment and would have to leave home before 6:30 a.m. due to drive time to arrive at the scheduled appointment; or

(d) the medical treatment requires an overnight stay.

(9) The Department shall reimburse actual lodging and food costs or \$50 per night, whichever is less. Reimbursement for food costs shall be no more than \$25 of the \$50 overnight reimbursement rate.

(10) If a recipient has a medical need to stay more than two nights to receive medical services, the recipient must obtain approval from the Department before expenses for additional nights can be reimbursed.

(11) If a recipient has a medical need for a companion or attendant when traveling outside of the recipient's local area, and the recipient is not staying in a medical facility, lodging costs for the companion or attendant may be reimbursed according to the rate specified in Subsection R414-306-5(9).

The reimbursement may also include salary if the attendant is not a member of the recipient's family, but not for standby time. One parent or guardian may qualify as an attendant if the parent or guardian must receive medical instructions to meet the recipient's needs, or the recipient is a minor child.

(12) Reimbursements for personal transportation shall not be made for trips made more than 12 months before the month the client requests reimbursement, with one exception. If a client is granted coverage for months more than one year prior to the eligibility decision, the client may request reimbursement and provide verification for personal transportation costs incurred during those months. In this case, the client must make the request and provide verification within three months after receiving the eligibility decision.

(13) Reimbursement for fee-for-service providers:

(a) Payments for Medical transportation are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients.

(b) Fees are established using the methodology described in the Utah Medicaid State Plan, Attachment 4.19-B Section R, Transportation.

(14) Medical Transportation under a Section 1915(b) waiver using a transportation contractor:

(a) Non-emergency medical transportation will be provided by a contracted transportation provider. The contractor provides non-emergency medical transportation services statewide, either as the primary provider or through a subcontractor. Transportation service under the waiver do not include bus passes and paratransit services by a public carrier, such as Flextrans.

(b) Prior authorization is required for all transportation services provided through the contractor.

(c) If the medical service is not available within the state, or the nearest Medicaid provider is outside the state, medical transportation to services outside of Utah is covered up to 120 ground travel miles one-way outside of the Utah border. The ride must originate or end within Utah borders. Non-emergency transportation originating and ending outside of Utah is not covered.

(d) A recipient is not eligible for non-emergency medical transportation services if the recipient owns a licensed vehicle or lives in a residence with a family member who owns a licensed vehicle, unless a physician verifies that the nature of the recipient's medical condition or disability makes driving inadvisable and there is no family member physically able to drive the recipient to and from medical appointments.

(e) A recipient is not eligible for non-emergency medical transportation services if public transportation is available in the recipient's area, unless the public transportation is inappropriate for the recipient's medical or mental condition as certified by a physician.

(f) A recipient is not eligible for non-emergency medical transportation services if paratransit services such as Flextrans are available in the recipient's area, unless the recipient's medical condition requires door to door services due to physical inability to get from the curb or parking lot to the medical provider's facility. This inability must be certified by a physician. To be eligible for transportation under the waiver, the recipient must receive a denial of services letter from Flextrans or other paratransit services.

(g) Transportation for urgent care services is provided under the provisions of items (d), (e) and (f) above and will be provided within 24 hours of request. Urgent care is defined as non-emergency medical care which is considered by the prudent lay person as medically safe to wait for medical attention within the next 24 hours.

Institutionalized SSI Recipients.

(1) The Department incorporates by reference Section 1616(a) through (d) of the Compilation of the Social Security Laws, January 1, 2009 ed.

(2) A State Supplemental payment equal to \$15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the \$15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to \$30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

KEY: effective date, program benefits, medical transportation

January 1, 2014

Notice of Continuation January 23, 2013

26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-307. Eligibility for Home and Community-Based Services Waivers.****R414-307-1. Introduction and Authority.**

(1) Section 26-18-3 authorizes this rule. It establishes eligibility requirements for Medicaid coverage for home and community-based service waivers.

(2) The Department adopts 42 CFR 435.217 and 435.726, 2011 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect April 13, 2012, which is incorporated by reference.

R414-307-2. Definitions.

The definitions found in Rules R 414-1 and R414-301 apply to this rule.

R414-307-3. General Requirements for Home and Community-Based Services Waivers.

(1) The Department shall apply the provisions of Sec. 2404 of Pub. L. No. 111 148, Patient Protection and Affordable Care Act, which refers to applying the provisions of Section 1924 of the Social Security Act to married individuals who are eligible for home and community-based waiver services.

(2) To qualify under a home and community-based services waiver, an individual must meet:

(a) the medical eligibility criteria defined in the waiver implementation plan adopted in Rule R414-61 applicable to the specific waiver under which the individual is seeking services, as verified by the referring agency case manager;

(b) the eligibility criteria for one of the Medicaid coverage groups selected for coverage in the specific waiver implementation plan under which the individual is seeking services;

(c) the non-financial Medicaid criteria defined in Rule R414-302; and

(d) the requirements in this rule applicable to all waiver applicants and recipients, as well as requirements specific to the waiver for which the individual is seeking eligibility.

(3) The provisions found in Rule R414-301 apply to applicants and recipients of home and community-based services waivers.

(4) For individuals claiming a disability, the disability provisions of Rule R414-303 apply.

(5) Except where otherwise stated in this rule, the income provisions of Rule R414-304 apply to waiver applicants and recipients.

(6) Except where otherwise stated in this rule, the resource provisions of Rule R414-305 apply to waiver applicants and recipients.

(7) The benefit provisions of Rule R414-306 apply to waiver applicants and recipients.

(8) The provisions found in Rule R414-308 that apply to eligibility determinations, redeterminations, change reporting, verification, and improper medical assistance also apply to waiver applicants and recipients.

(9) The Department shall limit the number of individuals covered by a home and community-based services waiver as provided in the adopted waiver implementation plan.

(10) The Department adopts and incorporates by reference, Section 1917(f) of the Social Security Act, effective January 1, 2013. An individual is ineligible for nursing facility and other long-term care services when an individual has home equity that exceeds the limit set forth in Section 1917(f).

(a) The Department sets that limit at the minimum level allowed under Section 1917(f).

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group defined in the Utah Medicaid State Plan may receive Medicaid

for services other than long-term care services provided under the plan or the home and community-based waiver.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group.

R414-307-4. Special Income Group.

The following requirements apply to individuals who qualify for a Medicaid home and community-based services waiver under the special income group defined in 42 CFR 435.217 because they do not meet community Medicaid rules but would be eligible for Medicaid if they were living in a medical institution:

(1) If the individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the income and resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the eligibility agency shall count one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The eligibility agency shall count actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The eligibility agency shall apply the transfer of asset provisions of Section 1917 of the Social Security Act in effect January 1, 2013.

(7) The individual's cost-of-care contribution is determined by deducting from the individual's total income, the post-eligibility allowances for the specific waiver for which the individual qualifies.

(8) The eligibility agency shall determine special income group eligibility for an individual starting the month that waiver services begin. The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-5. Medically Needy Waiver Group.

The following requirements apply to individuals applying for or determined eligible for the New Choices Waiver or the Individuals with Physical Disabilities Waiver who meet the eligibility criteria for a medically needy coverage group defined in 42 CFR 435.301 that the Department has selected for coverage under the implementation plan for the specific waiver:

(1) If an individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's

resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the eligibility agency shall count one-half of jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income of the individual determined under the most closely associated cash assistance program to decide eligibility for the medically needy waiver group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may only count income and resources of the child and may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The eligibility agency shall count actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The eligibility agency shall apply the income deductions allowed by the community Medicaid category under which the individual qualifies. The eligibility agency shall compare countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown.

(a) The individual's medical expenses, including the cost of long-term care services, must exceed the spenddown amount.

(b) If an individual does not have a community spouse, the individual must pay the spenddown to the eligibility agency for Medicaid waiver eligibility.

(c) An individual who has a community spouse is subject to the post-eligibility provisions of Section 1924 of the Social Security Act. The eligibility agency determines the individual's cost-of-care contribution by deducting from the individual's total income, the post-eligibility allowances defined in the implementation plan of the specific waiver for which the individual qualifies.

(7) The eligibility agency deducts medical expenses incurred by the individual in accordance with Section R414-304-11.

(8) The eligibility agency shall determine an individual's eligibility for the medically needy waiver group starting the month that waiver services begin. The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-6. New Choices Waiver Eligibility Criteria.

(1) To qualify for the New Choices Waiver, an individual must be 65 years of age or older, or at least 18 through 64 years of age and disabled as defined in Section 1614(a)(3) of the Social Security Act. For the purpose of this waiver, an individual is 18 years of age beginning the first month after the month of the individual's 18th birthday.

(2) A single individual eligible under the special income group, or any married individual with a community spouse, may be required to pay a contribution toward the cost-of-care to receive home and community-based services. The eligibility agency determines a client's cost-of-care contribution as follows:

(a) The eligibility agency counts all of the client's income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency deducts the following amounts from the individual's income:

(i) A personal needs allowance equal to 100% of the

federal poverty guideline for a household of one;

(ii) For individuals with earned income, up to \$125 of gross-earned income;

(iii) Actual monthly shelter costs not to exceed \$300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly;

(v) In the case of a married individual with a community spouse, an allowance for a community spouse and dependent family members who live with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act;

(vi) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community-based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of these individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income;

(vii) Medical and remedial care expenses incurred by the individual in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after these deductions is the individual's cost-of-care contribution.

(3) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

R414-307-7. Community Supports Home and Community-Based Services Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(1) Medicaid eligibility for the Community Supports Home and Community-Based Services waiver is limited to individuals with intellectual disabilities and other related conditions.

(2) An individual's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. The spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-3 apply to a married individual.

(3) An eligible individual may be required to pay a contribution toward the cost-of-care to receive home and community-based services. The eligibility agency shall determine an individual's cost-of-care contribution as follows:

(a) The eligibility agency shall count all of the individual's income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) For an individual with earned income, earned income up to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect April 4, 2012, to determine countable earned income.

(ii) A personal needs allowance for the individual equal to 100% of the federal poverty level for one person.

(iii) In the case of a married individual with a community spouse, a deduction for a community spouse and dependent family members living with the community spouse in accordance with the provisions of Section 1924 of the Social Security Act.

(iv) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community-based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income.

(v) Health insurance premiums for the waiver-eligible recipient paid by the recipient, or medical expenses incurred by the recipient in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost-of-care contribution.

(4) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

(5) The eligibility agency shall count parental and spousal income only if the individual receives a cash contribution from a parent or spouse.

(6) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-8. Home and Community-Based Services Waiver for Individuals Age 65 and Older.

(1) Medicaid eligibility for Home and Community-Based Services for individuals 65 years of age and older is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care.

(2) A client's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. The spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-3 apply to a married individual.

(3) An eligible client may be required to pay a contribution toward the cost-of-care to receive home and community-based services. The eligibility agency shall determine a client's cost-of-care contribution as follows:

(a) The eligibility agency shall count all income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The eligibility agency shall count a spouse's income only if the client receives a cash contribution from a spouse.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) A personal needs allowance for the individual equal to 100% of the federal poverty level for one person;

(ii) For individuals with earned income, up to \$125 of gross-earned income;

(iii) Actual monthly shelter costs not to exceed \$300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv) A deduction for monthly utility costs equal to the

standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly;

(v) In the case of a married individual with a community spouse, a deduction for a community spouse and dependent family members who live with the community spouse in accordance with the provisions of Section 1924 of the Social Security Act;

(vi) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community-based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income;

(vii) Health insurance premiums for the waiver-eligible recipient paid by the recipient, or medical expenses incurred by the recipient in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost-of-care contribution.

(4) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

(5) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-9. Home and Community Based Services Waiver for Technology Dependent/Medically Fragile Individuals.

(1) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the 21st birthday falls.

(2) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in the Technology Dependent waiver implementation plan, non-financial Medicaid eligibility criteria in Rule R414-302, and a Medicaid category of coverage defined in the waiver implementation plan.

(3) All other eligibility requirements follow the rules for the Community Supports Home and Community-Based Services Waiver found in Section R414-307-7, except for Subsection R414-307-7(1).

R414-307-10. Home and Community-Based Services Waiver for Individuals with Acquired Brain Injury.

(1) To qualify for services under this waiver, the individual must be at least 18 years of age. The person is considered to be 18 years of age in the month in which the 18th birthday falls.

(2) All other eligibility requirements follow the rules for the Home and Community-Based Services Waiver for Aged Individuals found in Section R414-307-8, except for Subsection R414-307-8(1).

R414-307-11. Home and Community-Based Services Waiver for Individuals with Physical Disabilities.

(1) To qualify for the waiver for individuals with physical disabilities, the individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(2) A client's resources must be equal to or less than \$2000. The spousal impoverishment resource provisions for married, institutionalized clients in Section R414-305-3 apply to this rule.

(3) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. The eligibility agency counts all income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. Eligibility is determined counting only the gross income of the client.

(4) The eligibility agency counts a spouse's income only if the client receives a cash contribution from a spouse.

(5) An individual whose income does not exceed 300% of the federal benefit rate, or any married individual with a community spouse may be required to pay a cost-of-care contribution. The following provisions apply to the determination of cost-of-care contribution.

(a) The eligibility agency counts all of the client's income except income that is excluded under other federal laws from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency deducts the maximum allowance available, which is a personal needs allowance equal to 300% of the federal benefit rate payable under Section 1611(b)(1) of the Social Security Act for an individual with no income. No other deductions from income are allowed.

(6) An individual who does not have a community spouse and whose income exceeds three times the federal benefit rate payable under Section 1611(b)(1) of the Social Security Act may pay a spenddown to become eligible. To determine the spenddown amount, the income rules and medically needy income standard for non-institutionalized aged, blind or disabled individuals in Rule R414-304 apply except that income is not deemed from the client's spouse.

(7) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-12. Home and Community-Based Services Waiver for Individuals with Autism.

(1) To qualify for the waiver for individuals with autism, the child must be at least two years of age and under six years of age. The last month a child can be eligible for this waiver is the month in which the child turns six years of age.

(2) All other eligibility requirements follow the rules of the Community Supports Home and Community-Based Services Waiver found in Section R414-307-7 except for Subsection R414-307-7(1).

KEY: eligibility, waivers, special income group

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Notice of Continuation April 17, 2012

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-308. Application, Eligibility Determinations and Improper Medical Assistance.****R414-308-1. Authority and Purpose.**

(1) This rule is authorized by Section 26-18-3.

(2) The purpose of this rule is to establish requirements for medical assistance applications, eligibility decisions and reviews, eligibility period, verifications, change reporting, notification and improper medical assistance for Medicaid and Medicare cost sharing programs.

R414-308-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) In addition, the following definitions apply:

(a) "Due date" means the date that a recipient is required to report a change or provide requested verification to the eligibility agency.

(b) "Eligibility review" means a process by which the eligibility agency reviews current information about a recipient's circumstances to determine whether the recipient is still eligible for medical assistance.

(c) "Open enrollment" means a period of time when the eligibility agency accepts applications.

R414-308-3. Application and Signature.

(1) The Department adopts and incorporates by reference, 42 CFR 435.907, October 1, 2012 ed., concerning the application requirements for medical assistance programs.

(a) The applicant or authorized representative must complete and sign the application under penalty of perjury. If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative. The eligibility agency may assign someone to act as the authorized representative when the individual requires help to apply and cannot appoint a representative.

(c) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(2) The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday except as described below:

(a) When the individual applies through the federally facilitated marketplace (FFM) and the application is transferred from the FFM for a Medicaid eligibility determination, the date of application is the date the individual applies through the FFM.

(b) If the application is delivered to the eligibility agency after the close of business, the date of application is the next business day;

(c) If the applicant delivers the application to an outreach location during normal business hours, the date of application is that business day when outreach staff is available to receive the application. If the applicant delivers the application to an outreach location on a non-business day or after normal business

hours, the date of application is the last business day that a staff person from the eligibility agency was available at the outreach location to receive or pick up the application;

(d) When the eligibility agency receives application data transmitted from the Social Security Administration (SSA) pursuant to the requirements of 42 U.S.C. Sec. 1320b-14(c), the eligibility agency shall use the date that the individual submits the application for the low-income subsidy to the SSA as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the eligibility agency receives the transmitted data. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs;

(e) If an application is filed through the "myCase" system, the date of application is the date the application is submitted to the eligibility agency online.

(3) The eligibility agency shall accept a signed application that an applicant sends by facsimile as a valid application.

(4) If an applicant submits an unsigned or incomplete application form to the eligibility agency, the eligibility agency shall notify the applicant that he must sign and complete the application no later than the last day of the application processing period. The eligibility agency shall send a signature page to the applicant and give the applicant at least ten days to sign and return the signature page. When the application is incomplete, the eligibility agency shall notify the applicant of the need to complete the application and offer ways to complete the application.

(a) The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application if the agency receives a signed signature page and completed application within the application processing period.

(b) If the eligibility agency does not receive a signed signature page and completed application form within the application processing period, the application is void and the eligibility agency shall send a denial notice to the applicant.

(c) If the eligibility agency receives a signed signature page and completed application within 30 calendar days after the notice of denial date, the date of receipt is the new application date and the provisions of Section R414-308-3(2) apply.

(d) If the eligibility agency receives a signed signature page and completed application more than 30 calendar days after it sends the denial notice, the applicant must reapply by completing and submitting a new application form. The new application date is determined in accordance with this rule.

(5) The eligibility agency treats the following situations as a new application without requiring a new application form. The application date is the day that the eligibility agency receives the request or verification from the recipient. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency;

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The eligibility agency waives the requirement for the open enrollment period during that calendar month for programs subject to open enrollment;

(c) A medical assistance program other than PCN ends due to an incomplete review, and the recipient responds to the review request within the three calendar months that follow the closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment;

(d) Except for PCN and UPP that are subject to open

enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 calendar days after it denies the application. The recipient must complete a new application to reapply for medical assistance;

(e) For PCN and UPP applicants, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date and the eligibility agency has not stopped the open enrollment period. If the eligibility agency has stopped enrollment, the applicant must wait for an open enrollment period to reapply.

(6) The eligibility agency shall use the 2013 eligibility criteria in effect from October 1, 2013, through December 31, 2013, when considering applications that it receives during that time period. The agency may also use the three-month retroactive period.

(7) For an individual who applies for and is found ineligible for Medicaid from October 1, 2013, and December 31, 2013, the eligibility agency shall redetermine eligibility under the policies that become effective January 1, 2014, using the modified adjusted gross income (MAGI)-based methodology without requiring a new application.

(a) Medicaid eligibility may begin no earlier than January 1, 2014, for an individual who becomes eligible using the MAGI-based methodology;

(b) For applications received on or after January 1, 2014, the eligibility agency shall apply the MAGI-based methodology first to determine Medicaid eligibility.

(c) The eligibility agency shall determine eligibility for other Medicaid programs that do not use MAGI-based methodology if the individual meets the categorical requirements of these programs, which may include a medically needy eligibility group for individuals found ineligible using the MAGI-based methodology.

(8) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply, except as defined in Subsection R414-308-6(7).

(9) An individual determined eligible for a presumptive eligibility period must file an application for medical assistance with the eligibility agency in accordance with the requirements of Sections 1920, 1920A and 1920B of the Social Security Act.

(10) The eligibility agency shall process low-income subsidy application data transmitted from SSA in accordance with 42 U.S.C. Sec. 1320b-14(c) as an application for Medicare cost sharing programs. The eligibility agency shall take appropriate steps to gather the required information and verification from the applicant to determine the applicant's eligibility.

(a) Data transmitted from SSA is not an application for Medicaid.

(b) An individual who wants to apply for Medicaid when contacted for information to process the application for Medicare cost sharing programs must complete and sign a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the eligibility agency receives the application for Medicaid.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) The Department adopts and incorporates by reference 42 CFR 435.945, 435.948, 435.949, 435.952, and 435.956, October 1, 2012 ed.

(a) The Department may seek approval from the Secretary in accordance with 42 CFR 435.945(k) to use alternative

electronic data sources in lieu of using the data available from the federal data hub.

(b) Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to complete electronic data matches.

(c) The eligibility agency may request verification from applicants and recipients in accordance with the agency's verification plan that is necessary to determine eligibility.

(2) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility when the information cannot be verified through electronic data matches, or when the electronic data match information is not reasonably compatible with the client provided information.

(a) The eligibility agency shall provide the applicant or recipient a written request of the needed verification.

(b) The applicant or recipient has at least ten calendar days from the date that the eligibility agency gives or sends the verification request to provide verification.

(c) The due date for returning verification, forms or information requested by the eligibility agency is the close of business on the date that the eligibility agency sets as the due date in a written request.

(d) An applicant must provide all requested verification before the close of business on the last day of the application period. If the last day of the application processing period is a non-business day, the applicant or recipient has until the close of business on the next business day to return verification.

(e) The eligibility agency shall allow the applicant or recipient more time to provide verification if he requests more time by the due date. The eligibility agency shall set a new due date based on what the applicant or recipient needs to do to obtain the verification and whether he shows a good faith effort to obtain the verification.

(f) If an applicant or recipient does not provide verification by the due date and does not contact the eligibility agency to ask for more time to provide verification, the eligibility agency shall deny the application or review, or end eligibility.

(g) If a due date falls on a non-business day, the due date is the close of business on the next business day.

(3) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax, self-employment tax filing documents, or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(4) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this inconsistency, the eligibility agency shall require the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee)(1)(B).

(a) The individual must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual meets all other eligibility criteria.

(c) If the individual fails to provide verification, the eligibility agency shall end eligibility within 30 days after the 90-day period. The eligibility agency may not extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13

through 455.23.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The Department adopts and incorporates by reference 42 CFR 435.911, 435.912 and 435.919, October 1, 2012 ed., regarding eligibility determinations and timely determinations. The eligibility agency shall provide proper notice about a recipient's eligibility, changes in eligibility, and the recipient's right to request a fair hearing in accordance with the provisions of 78 FR 42303, which is incorporated by reference and 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, October 1, 2012 ed., which are incorporated by reference.

(2) The eligibility agency shall extend the time limit if the applicant asks for more time to provide requested information before the due date. The eligibility agency shall give the applicant at least ten more days after the original due date to provide verifications upon the applicant's request. The eligibility agency may allow a longer period of time for the recipient to provide verifications if the agency determines that the delay is due to circumstances beyond the recipient's control.

(3) If an individual who is determined presumptively eligible files an application for medical assistance in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the eligibility agency shall continue presumptive eligibility until it makes an eligibility decision based on that application. The filing of additional applications by the individual does not extend the presumptive eligibility period.

(4) An applicant may withdraw an application for medical assistance any time before the eligibility agency makes an eligibility decision. An individual requesting an assessment of assets for a married couple under 42 U.S.C. 1396r-5 may withdraw the request any time before the eligibility agency completes the assessment.

R414-308-6. Eligibility Period and Reviews.

(1) The eligibility period begins on the effective date of eligibility as defined in Section R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a recipient must pay one of the following fees to receive Medicaid, the eligibility agency shall determine eligibility and notify the recipient of the amount owed for coverage. The eligibility agency shall grant eligibility when it receives the required payment, or in the case of a spenddown or cost-of-care contribution for waivers, when the recipient sends proof of incurred medical expenses equal to the payment. The fees a recipient may owe include:

- (i) a spenddown of excess income for medically needy Medicaid coverage;
- (ii) a Medicaid Work Incentive (MWI) premium; or
- (iii) a cost-of-care contribution for home and community-based waiver services.

(b) A required spenddown, MWI premium, or cost-of-care contribution is due each month for a recipient to receive Medicaid coverage.

(c) The recipient must make the payment or provide proof of medical expenses within 30 calendar days from the mailing date of the application approval notice, which states how much the recipient owes.

(d) For ongoing months of eligibility, the recipient has until the close of business on the tenth day of the month after the benefit month to meet the spenddown or the cost-of-care contribution for waiver services, or to pay the MWI premium. If the tenth day of the month is a non-business day, the recipient has until the close of business on the first business day after the tenth. Eligibility begins on the first day of the benefit month once the recipient meets the required payment. If the recipient does not meet the required payment by the due date, the recipient may reapply for retroactive benefits if that month is

within the retroactive period of the new application date.

(e) A recipient who lives in a long-term care facility and owes a cost-of-care contribution to the medical facility must pay the medical facility directly. The recipient may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in Section R414-304-9. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount that the recipient owes the facility.

(f) Even when the eligibility agency does not close a medical assistance case, no eligibility exists in a month for which the recipient fails to meet a required spenddown, MWI premium, or cost-of-care contribution for home and community-based waiver services.

(g) The eligibility agency shall continue eligibility for a resident of a nursing home even when an eligible resident fails to pay the nursing home the cost-of-care contribution. The resident, however, must continue to meet all other eligibility requirements.

(2) The eligibility period ends on:

(a) the last day of the month in which the eligibility agency determines that the recipient is no longer eligible for medical assistance and sends proper closure notice;

(b) the last day of the month in which the eligibility agency sends proper closure notice when the recipient fails to provide required information or verification to the eligibility agency by the due date;

(c) the last day of the month in which the recipient asks the eligibility agency to discontinue eligibility, or if benefits have been issued for the following month, the end of that month;

(d) for time-limited programs, the last day of the month in which the time limit ends;

(e) for the pregnant woman program, the last day of the month which is at least 60 days after the date the pregnancy ends, except that for pregnant woman coverage for emergency services only, eligibility ends on the last day of the month in which the pregnancy ends; or

(f) the date the individual dies.

(3) A presumptive eligibility period begins on the day the qualified entity determines an individual to be presumptively eligible. The presumptive eligibility period shall end on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the individual's application when that application is filed in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act; or

(b) in the case of an individual who does not file an application in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the last day of the month that follows the month in which the individual becomes presumptively eligible.

(4) For an individual selected for coverage under the Qualified Individuals Program, the eligibility agency shall extend eligibility through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

(5) The eligibility agency shall complete a periodic review of a recipient's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916, October 1, 2012 ed., which the Department adopts and incorporates by reference, at least once every 12 months. The eligibility agency shall review factors that are subject to change to determine if the recipient continues to be eligible for medical assistance.

(6) For non-MAGI-based coverage groups, the eligibility agency may complete an eligibility review more frequently when it:

(a) has information about anticipated changes in the recipient's circumstances that may affect eligibility;

(b) knows the recipient has fluctuating income;

(c) completes a review for other assistance programs that the recipient receives; or

(d) needs to meet workload demands.

(7) If a recipient fails to respond to a request for information to complete the review, the eligibility agency shall end eligibility effective at the end of the review month and send proper notice to the recipient.

(a) If the recipient responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall consider the response to be a new application without requiring the client to reapply. The application processing period shall apply for the new request for coverage.

(b) If the recipient becomes eligible based on this reapplication, the recipient's eligibility becomes effective the first day of the month after the closure date if verification is provided timely. If the recipient fails to return verification timely or if the recipient is determined to be ineligible, the eligibility agency shall send a denial notice to the recipient.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(8) If the eligibility agency sends proper notice of an adverse decision in the review month, the agency shall change eligibility for the following month.

(9) If the eligibility agency does not send proper notice of an adverse change for the following month, the agency shall extend eligibility to the following month. Upon completing an eligibility determination, the eligibility agency shall send proper notice of the effective date of any adverse decision.

(10) If the recipient responds to the review in the review month and the verification due date is in the following month, the eligibility agency shall extend eligibility to the following month. The recipient must provide all verification by the verification due date.

(a) If the recipient provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the recipient does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the recipient returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives the verification as a new application date. The agency shall then determine eligibility and send notice to the recipient.

(11) The eligibility agency shall provide ten-day notice of case closure if the recipient is determined ineligible or if the recipient fails to provide all verification by the verification due date.

(12) The eligibility agency may not extend coverage under certain medical assistance programs in accordance with state and federal law. The agency shall notify the recipient before the effective closure date.

(a) If the eligibility agency determines that the recipient qualifies for a different medical assistance program, the agency shall notify the recipient. Otherwise, the agency shall end eligibility when the permitted time period for such program expires.

(b) If the recipient provides information before the effective closure date that indicates that the recipient may qualify for another medical assistance program, the eligibility agency shall treat the information as a new application. If the recipient contacts the eligibility agency after the effective closure date, the recipient must reapply for benefits.

R414-308-7. Change Reporting and Benefit Changes.

(1) A recipient must report to the eligibility agency reportable changes in the recipient's circumstances. Reportable changes are defined in Section R414-301-2.

(a) The due date for reporting changes is the close of business ten calendar days after the recipient learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income for the recipient, the due date for reporting the income change is the close of business ten calendar days after the change.

(c) The date of report is the date that the recipient reports the change to the eligibility agency during normal business hours, or the date that the eligibility agency receives the information from another source.

(d) The agency shall accept change reports transferred from other insurance affordability programs.

(2) The eligibility agency may receive information from credible sources other than the recipient such as computer income matches and from anonymous citizen reports. The eligibility agency shall verify information from other sources that may affect the recipient's eligibility before using the information to change the recipient's eligibility for medical assistance. The eligibility agency shall verify information from citizen reports through other reliable proofs.

(3) If the eligibility agency needs verification from the recipient, the agency shall send the recipient a written request. The eligibility agency shall give the recipient at least ten calendar days from the notice date to respond. The due date for providing verification of changes is the close of business on the date that the eligibility agency sets as the due date in a written notice to the recipient.

(4) A recipient must provide change reports, forms or verifications to the eligibility agency by the close of business on the due date.

(5) If the information about a change causes an increase in a recipient's benefits and the eligibility agency asks the recipient for verification, the eligibility agency shall increase benefits as follows:

(a) An increase in benefits is effective on the first day of the month after the change report month if the recipient returns all verification within ten calendar days of the request date or by the end of the change report month, if longer;

(b) An increase in benefits is effective on the first day of the month after the date that the eligibility agency receives all verification if the recipient does not return verification by the due date, but returns verification in the calendar month that follows the report month.

(6) If the reported information causes an increase in a recipient's benefits and the eligibility agency does not request verification, the increase in benefits is effective on the first day of the month that follows the change report month.

(7) If a change adversely affects the recipient's eligibility for benefits, the eligibility agency shall change the effective date of eligibility to the first day of the month after the month in which it sends proper notice of the change.

(a) The eligibility agency shall change the effective date if it has enough information to adjust benefits, regardless of whether the recipient returns verification.

(b) The eligibility agency shall send a written request to the recipient for verification if it does not have enough information to adjust benefits. The recipient has at least ten days after the date of the request to return verification.

(i) Upon receiving verification, the eligibility agency shall adjust benefits to become effective on the first day of the month after the agency sends proper notice.

(ii) If the recipient does not return verification timely, the eligibility agency shall discontinue benefits after the month in which the agency sends proper notice.

(8) If the recipient returns all requested verification related to a change report in the month that follows the effective closure date, the eligibility agency shall treat the date of receipt as an application date and may not require the recipient to complete a new application form. The eligibility agency shall review the verification to determine whether the recipient is still eligible and notify the recipient of its decision. The eligibility agency may not change the review date unless it updates all factors of eligibility.

(9) If the eligibility agency cannot determine the effect of a change without verification from the recipient, the agency shall discontinue benefits if it does not receive the requested verification by the due date. If a change does not affect all household members and the recipient does not return verification, the eligibility agency shall discontinue benefits only for those individuals affected by the change.

(10) An overpayment may occur if the recipient does not report changes timely, or if the recipient does not return verification by the verification due date.

(a) The eligibility agency shall determine whether an overpayment has occurred based on when the agency could have made the change if the recipient had reported the change on time or returned verification by the due date.

(b) If a recipient fails to report a change timely or return verification or forms by the due date, the recipient must repay all services and benefits paid by the Department for which the recipient is ineligible.

(11) If a due date falls on a non-business day, the due date is the close of business on the next business day.

R414-308-8. Case Closure and Redetermination.

(1) The eligibility agency shall end medical assistance when the recipient requests the agency to close his case, when the recipient fails to respond to a request to complete the eligibility review, when the recipient fails to provide all verification needed to determine continued eligibility, or when the agency determines that the recipient is no longer eligible.

(2) If a recipient fails to complete the review process in accordance with Section R414-308-6, the eligibility agency shall close the case and notify the recipient.

(3) Before terminating a recipient's medical assistance, the eligibility agency shall determine whether the recipient is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost Sharing programs, the Children's Health Insurance Program (CHIP), the Primary Care Network (PCN), and Utah's Premium Partnership for Health Insurance (UPP).

(a) The eligibility agency may not require a recipient to complete a new application to make the redetermination. The agency, however, may request more information from the recipient to determine whether the recipient is eligible for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When determining eligibility for other programs, the eligibility agency may only enroll an individual in a medical assistance program during an open enrollment period, or when that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollment is closed. Open enrollment applies only to the PCN and UPP programs.

(4) The eligibility agency shall comply with the requirements of 42 CFR 435.1200, regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-308-9. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible. This assistance includes benefits that

an individual receives pending a fair hearing or during an undue hardship waiver when the individual fails to take actions 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 in excess or not enough for medical assistance benefits on behalf of an eligible individual.

(2) As applied in this section, services and benefits include all amounts that the Department pays on behalf of the recipient during the period in question and includes:

(a) premiums that the recipient pays to any Medicaid health plan or managed care plan including any payments for administration costs, Medicare, and private insurance plans;

(b) payments for prepaid mental health services; and

(c) payments made directly to service providers or to the recipient.

(3) If the eligibility agency determines that a recipient is ineligible for the services and benefits that he receives, the recipient must repay to the Department any costs that result from the services and benefits.

(4) The eligibility agency shall reduce the amount that the recipient must repay by the amount that the recipient pays to the eligibility agency for a Medicaid spenddown, a cost-of-care contribution, or a MWI premium for the month.

(5) If the recipient is eligible but the overpayment is because the spenddown, the MWI premium, or the cost-of-care contribution is incorrect, the recipient must repay the difference between the correct amount that the recipient should pay and the amount that the recipient has paid.

(6) If the eligibility agency determines that the recipient is ineligible due to having resources that exceed the resource limit, the recipient must pay the lesser of the cost of services or benefits that the recipient receives, or the difference between the recipient's countable resources and the resource limit for each month resources exceed the limit.

(7) A recipient may request a refund from the Department if the recipient believes that:

(a) the monthly spenddown, or cost-of-care contribution that the recipient pays to receive medical assistance is less than what the Department pays for medical services and benefits for the recipient; or

(b) the amount that the recipient pays in the form of a spenddown, an MWI premium, or a cost-of-care contribution for long-term care services, exceeds the payment requirement.

(8) Upon receiving the request, the Department shall determine whether it owes the recipient a refund.

(a) In the case of an incorrect calculation of a spenddown, MWI premium, or cost-of-care contribution, the refundable amount is the difference between the incorrect amount that the recipient pays to the Department for medical assistance and the correct amount that the recipient should pay, less the amount that the recipient owes to the Department for any other past due, unpaid claims.

(b) If the spenddown or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown or cost-of-care contribution that the recipient pays for medical assistance and the amount that the Department pays on behalf of the recipient for services and benefits, less the amount that the recipient owes to the Department for any other past due, unpaid claims. The Department shall issue the refund only after the 12-month time period that medical providers have to submit claims for payment.

(c) The Department may not issue a cash refund for any portion of a spenddown or cost-of-care contribution that is met with medical bills. Nevertheless, the Department may pay additional covered medical bills used to meet the spenddown or

cost-of-care contribution equal to the amount of refund that the Department owes the recipient, or apply the bill amount toward a future spenddown or cost-of-care contribution.

(9) A recipient who pays a premium for the MWI program may not receive a refund even when the Department pays for services that are less than the premium that the recipient pays for MWI.

(10) If the cost-of-care contribution that a recipient pays a medical facility is more than the Medicaid daily rate for the number of days that the recipient is in the medical facility, the recipient may request a refund from the medical facility. The Department shall refund the amount that it owes the recipient only when the medical facility sends the excess cost-of-care contribution to the Department.

(11) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department shall recover the overpayment from both the alien and the sponsor.

KEY: public assistance programs, applications, eligibility, Medicaid

January 1, 2014

26-18

Notice of Continuation January 23, 2013

R452. Heritage and Arts, Arts and Museums, Museum Services.**R452-100. Certified Local Museum Designation.****R452-100-1. Authority and Purpose.**

- (1) This rule is enacted pursuant to Subsection 9-6-603(8).
- (2) This rule establishes a program by which local museums may be designated as certified local museums.

R452-100-2. Requirements Museums Must Meet in Order to Be Considered Eligible for Application as a Certified Local Museum.

- (1) In order to apply for certified local museum designation, a museum shall:
 - (a) be located in Utah;
 - (b) be a nonprofit organization that has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code;
 - (c) be organized on a permanent basis for educational or aesthetic purposes;
 - (d) have as its primary purpose the display or use of collections and exhibits;
 - (e) display objects to the public through facilities that it own or operates; and
 - (f) have at least one paid or unpaid staff member, or the equivalent, whose primary duty is the care, acquisition, or exhibition to the public of objects owned or used by the museum.
- (2) A museum operated by a government entity need not satisfy the requirements of Subsection (1)(b).

R452-100-3. Application for Certified Local Museum Designation.

- (1) A museum wishing to apply for the certified local museum designation shall:
 - (a) complete the form entitled "Certification Requirements for Museums" which is available from the Office of Museum Services;
 - (b) obtain a letter from the Department of the Treasury confirming that:
 - (i) the museum is registered as a nonprofit organization as described in Subsection R210-100-2(1)(b); and
 - (ii) the museum has been assigned an Employee Identification Number.
 - (c) submit both the form and the letter to the Office of Museum Services.
- (2) A museum operated by a political subdivision of the state:
 - (a) need not comply with the requirements of Subsection (1)(b); and
 - (b) shall submit a letter to the Office of Museum Services:
 - (i) indicating that it is operated by a political subdivision of the state; and
 - (ii) providing an Employee Identification Number.

R452-100-4. Granting a Certified Local Museum Designation.

Upon receipt of the materials outlined in Section R210-100-3, the Office of Museum Services will provide a letter of certification to the applying museum.

**KEY: certified local museums, museum services, museums
January 1, 2008 9-6-603(8)
Notice of Continuation December 31, 2013**

R539. Human Services, Services for People with Disabilities.**R539-1. Eligibility.****R539-1-1. Purpose.**

- (1) The purpose of this rule is to provide:
- (a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and
- (b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

- (1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.
- (2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

- (1) Terms used in this rule are defined in Section 62A-5-101.
- (2) In addition:
- (a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;
- (b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;
- (c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;
- (d) "Department" means the Department of Human Services;
- (e) "Division" means the Division of Services for People with Disabilities;
- (f) "Electronic Surveillance" is observing or listening to persons, places, or activities with the aid of electronic devices such as cameras, web cams, global positioning systems, motion detectors, weight detectors or microphones, in real time.
- (g) "Electronic Surveillance Certification" is documentation signed by members of the Provider Human Rights Committee that contains the location of the site under surveillance, description of the types of surveillance to be used, names of persons to be under surveillance and signed consent from each person affected as required by Subsections R539-3-7(3)(a) and R539-3-7(4)(a).
- (h) "Form" means a standard document required by Division rule or other applicable law;
- (i) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;
- (j) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;
- (k) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;
- (l) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;
- (m) "Related Conditions" means a severe, chronic disability that meets the following conditions:
- (i) It is attributable to:
- (A) Cerebral palsy or epilepsy; or
- (B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with

intellectual disability, and requires treatment or services similar to those required for these persons.

- (ii) It is manifest before the person reaches age 22.
- (iii) It is likely to continue indefinitely.
- (iv) It results in substantial functional limitations in three or more of the following areas of major life activity:
- (A) Self-care.
- (B) Understanding and use of language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction
- (F) Capacity for independent living.

(n) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(o) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah;

(p) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(q) "Support Coordinator" is an employee of the Division or an individual contracted with the Division to provide assistance in assessing the needs of, and developing services and supports for, persons receiving Division funding. Support Coordinators complete written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitor the quality of the services provided.

(r) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(s) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101(9).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with intellectual disability as per R539-1-3 or related conditions.

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the Division office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are met.

(12) This section does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.

(1) Matching federal funds may be available through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to R414-510, where the Department of Health determines that sufficient funds are available, a person meeting the eligibility requirements set forth by the Department of Health in R414-510-3 may receive Medicaid Home and Community-Based Waiver Services by transitioning out of an ICF/ID into the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions.

(4) Pursuant to R414-502, where the Department of Health

determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, a person may be found eligible for funding through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions when all other eligibility requirements of R414-502 are met.

(5) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

- (a) Have the functional loss of two or more limbs;
- (b) Be 18 years of age or older;
- (c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and
- (d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.
- (e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;
- (f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;
- (g) Be capable of managing personal financial and legal affairs; and
- (h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

- (a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.
- (b) The Applicant shall be required to update information.
- (4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

- (b) determine and prioritize needs scores;
- (c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons with physical disabilities may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person who is eligible for waiver service through the Medicaid Home and Community-Based Waiver for People with Disabilities is not eligible for respite services.

(3) Pursuant to R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities when all other eligibility requirements of R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury (by a licensed physician) according to the International Classifications of Diseases, 9th Revision, (ICD 9 CM). The following codes listed below qualify for ABI services:

- 047.9--aseptic meningitis (unspecified viral meningitis)
- 290 - 294 Codes not accepted as stand alone diagnosis (needing additional diagnosis)
 - 290.4--vascular dementia
 - 290.10 Prehensile dementia, uncomplicated
 - 293.9--psychotic, post traumatic brain injury syndrome
 - 294.0--amnesia
 - 294.9--unspecified persistent mental disorders due to conditions classified elsewhere
 - 294.9--with psychotic reaction
 - 294.10-294.11--dementia without and with behavior disturbance Aggression, combative violent behaviors and wandering off
- 310.0 - 310.9 nonpsychotic disorder, brain damage
 - 310.0--frontal lobe syndrome
 - 310.1--mild memory loss or lack following organic brain damage
 - 310.1--personality change due to conditions classified elsewhere
 - 310.2--post concussion syndrome
 - 310.2--post contusion syndrome, includes encephalopathy
 - 310.2--post contusion syndrome, includes TBI
 - 310.2--post contusion syndrome, includes TBI
 - 310.2--post traumatic brain injury
 - 310.2--post traumatic brain injury syndrome
 - 310.8 - 310.9--other nonpsychotic mental disorder, following organic brain damage
 - 310.8--other specified mental disorder following organic brain damage
 - 310.8--other specified nonpsychotic mental disorders following organic brain damage
 - 310.9--organic brain syndrome
 - 310.9--Organic brain syndrome
 - 310.9--organic brain syndrome (chronic or acute)
 - 310.9--unspecified nonpsychotic mental disorder following organic brain damage
- 320.9--meningitis, bacterial
- 322.0--meningitis, nonpyogenic
- 322.2--meningitis, chronic
- 322.9--meningitis
- 323.0 - 323.82--choose to pick cause of encephalitis, not 323.9
- 324.0 - 324.9--Intracranial and intraspinal abscess
- 325 Phlebitis and thrombophlebitis of intracranial venous sinuses
- 326 Late effects of intracranial abscess or pyogenic infection
 - 348.0--arachnoid cyst, brain; not as stand alone diagnosis (needs additional diagnosis)
 - 348.1--anoxic brain damage
 - 349.82 Toxic encephalopathy
 - 430--subarachnoid hemorrhage
 - 431--intracerebral hemorrhage
 - 432.0--hematoma, non-traumatic brain
 - 432.1--subdural hematoma
 - 432--other and unspecified intracranial hemorrhage
 - 433 Occlusion and stenosis of precerebral arteries (only if 5th digit is 1)
 - 434 Occlusion of cerebral arteries (only if 5th digit is 1)
 - 436--brain or cerebral, acute seizure; need another diagnosis in combination
 - 438 - 438.89 Late effects of cerebrovascular disease (excluding 438.9)
 - 780.93--Memory loss amnesia -only in combination with an E Code - (excludes 310.1 Mild Memory Disturbance due to

- organic brain damage) need an E code secondary to cause
 - List codes from 800 - 804 then 5th digit list only those that are 2 - 9 exclude 0 to 1(excluding 802's)
 - 800.0--closed skull fracture, vault (parietal, frontal, vertex)
 - 800.1 Fracture skull vault (frontal parietal) closed with laceration and contusion
 - 800.1--closed skull fracture, vault with cerebral contusion
 - 800.2 closed head injury with subarachnoid, subdural, and extradural hemorrhage
 - 800.2 Closed skull fracture, with subarachnoid, subdural, and extradural hemorrhage
 - 800.2--closed skull fracture, vault with epidural, extradural hemorrhage
 - 800.2--closed skull vault fracture with subdural hemorrhage
 - 800.3--closed skull fracture, vault with intracranial hemorrhage
 - 800.3--Closed skull fx with other and unspecified intracranial hemorrhage
 - 800.4--closed skull fracture, vault with intracranial injury
 - 800.4--closed skull fx with intracranial injury of other and unspecified nature
 - 800.5 - 800.9--Open skull fracture, vault (parietal or frontal area)
 - 800.6--open skull fx with cerebral laceration and contusion
 - 800.7--open skull fx with subarachnoid, subdural, and extra dural hemorrhage
 - 800.7--open skull vault fracture with subdural hemorrhage
 - 800.8--open skull fx other and unspecified intracranial hemorrhage
 - 800.9--Open skull fx with intracranial injury of other and unspecified nature
 - 800.9--open vault fracture with intracranial injury of other and unspecified nature
 - 801.0 - 801.9 Fracture of base of skull
 - 801.0--closed skull fracture, base
 - 801.1--closed skull fracture, with cerebral hemorrhage
 - 801.2--closed skull base fracture with subdural hemorrhage
 - 801.2--closed skull fracture with epidural hemorrhage
 - 801.3 - 801.4--closed skull fracture, base with intracranial hemorrhage
 - 801.5 - 801.9--open skull fracture, base of skull
 - 801.7--open skull base fracture with subdural hemorrhage
 - 803.0 - 804.9--Other and unqualified skull fractures (includes single or multiple fx)
 - 803.0--closed skull fracture with facial injuries
 - 803.1--closed skull fracture with cerebral contusion
 - 803.2--closed skull fracture with epidural, extradural hemorrhage
 - 803.2--closed skull fracture, with subachnoid, subdural, and extradural hemorrhage
 - 803.2--other and unqualified skull fractures, closed, subdural hemorrhage
 - 803.3--closed skull fracture with intracranial hemorrhage
 - 803.4--closed skull fracture with intracranial injury
 - 803.5 - 803.9--open skull fracture, other and unqualified
 - 803.7--other and unqualified skull fractures, open, subdural hemorrhage
 - 804.2--multiple fractures skull and face, closed, subdural hemorrhage
 - 804.5 - 804.9--Open skull fracture, multiple fractures skull and face
 - 804.7--multiple fractures skull and face, open, subdural hemorrhage
 - List codes from 850-854 then 5th digit list only those that are 2 - 9 exclude 0 to 1
 - 850.1 - 850.5--concussion with loss of conscious
 - 851.0 - 851.9--cerebral laceration and contusion, open or closed, specifies site

851.0--cerebral contusion without mention open wound
 851.2--cerebral laceration without mention of open wound
 851.4 or 851-6--cerebral or brain stem contusion s mention open wnd
 851.4--contusion brain stem
 851.8--cerebral contusion (851.0 - 851.9--specify site, open, closed)
 851.8--contusion brain
 851.8--other and unspecified cerebral contusion
 851.8--other unspecified cerebral s mention open wound
 852.0, 852.2, 854.4 hemorrhage s mention open wound
 852.0 - 852.5--Subarachnoid, subdural, and extradural hemorrhage following injury
 852.0--subarachnoid hemorrhage
 852.2 - 852.3--subdural hemorrhage, injury, without mention open, open
 852.2--subdural hemorrhage following injury, s mention open wound
 852.2--traumatic brain injury, subdural
 852.3--subdural hemorrhage following injury, with open wound
 852.4 - 852.5--extradural hemorrhage injury, without mention open
 853.0 other intracranial hemorrhage after injury s mention open wound
 853.0 - 853.1--other and unspecified intracranial hemorrhage following injury
 853.0--hematoma, traumatic brain
 854.0 - 854.1--Intracranial injury of other and unspecified nature
 854.0--injury intracranial
 854.0--intracranial hemorrhage due to injury
 854.1--intracranial injury of other and unspecified nature s mention open w
 905.0 Late effects of fracture of skull and face bones (5th digit list only those that are 2 - 9 exclude 0 - 1)
 906.0 Late effects of open wound of head, neck, and trunk (5th digit list only those that are 2 - 9 exclude 0 - 1)
 907.0--late effect of intracranial injury (5th digit list only those that are 2 - 9 exclude 0 - 1);
 (b) Be 18 years of age or older;
 (c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.
 (d) meet at least three of the functional limitations listed under number (4).
 (2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.
 (3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.
 (4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:
 (a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.
 (b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.
 (c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:
 (i) provide personal protection;
 (ii) provide necessities such as food, shelter, clothing, or mental or other health care;
 (iii) obtain services necessary for health, safety, or welfare;
 (iv) comprehend the nature and consequences of remaining

in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following

methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury when all other eligibility requirements of R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements for Waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning

meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: $(\text{assets} + \text{income}) / \text{by the total number of family members} = \text{available income}$). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Utah Administrative Code, Rule R414-302-5 and 42 CFR 435.910, 1997 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers
December 30, 2013 **62A-5-103**
Notice of Continuation November 5, 2012 **62A-5-105**

R539. Human Services, Services for People with Disabilities.**R539-4. Behavior Interventions.****R539-4-1. Purpose.**

(1) The purpose of this rule is to define and establish standards for Behavior Interventions, to protect Persons' rights, and prevent abuse and neglect.

R539-4-2. Authority.

(1) This rule establishes procedures and standards for Persons' constitutional liberty interests as required by Subsection 62A-5-103.

R539-4-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Behavior Intervention" means a specific technique designed to teach the Person skills and address their problems. Techniques are based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(b) "Behavior Peer Review Committee" means a group consisting of at least three specialists with experience in the fields of Positive Behavior Supports and applied behavior analysis. One of the three members must be outside the Provider agency. The Committee is primarily responsible for evaluating the quality, effectiveness, and least intrusiveness of the Person's Behavior Support Plan.

(c) "Behavior Support Plan" means a written document used by Provider staff and others, designed to address the Person's specific problems.

(d) "Contingent Rights Restrictions" means a Level III Intervention resulting in the temporary loss of rights based upon the occurrence of a previously identified problem.

(e) "Emergency Behavior Intervention" means the use of Level II Interventions not outlined in the Behavior Support Plan, but used in Emergency Situations.

(f) "Emergency Rights Restriction" means a Level II Intervention temporarily denying or restricting access to personal property, privacy, or travel in order to prevent imminent injury to the Person, others, or property. Rights are reinstated when immediate danger is resolved.

(g) "Emergency Situations" means one or more of the following:

(i) Danger to others: physical violence toward others with sufficient force to cause bodily harm.

(ii) Danger to self: abuse of self with sufficient force to cause bodily harm.

(iii) Danger to property: physical abuse or destruction of property.

(iv) Threatened abuse toward others, self, or property which, with an evidence of past threats, result in any of the items listed above.

(h) "Enforced Compliance" means a Level II Intervention in which a Person is physically guided through completion of a request or command that the Person is resisting.

(i) "Exclusionary Time-out" means a Level II Intervention removing the Person from a specific setting that exceeds 10 minutes or requires Enforced Compliance to move the Person to or prevent from leaving a designated area.

(j) "Extinction" means a Level I Intervention that withholds reinforcement from a previously reinforced behavior.

(k) "Functional Behavior Assessment" means a written document prepared by the Provider behavior specialist to determine why problems occur and develop effective interventions. The results of the assessment are a clear description of the problem, situations that predict when the problem will occur, consequences that maintain the problem, and a summary statement or hypothesis.

(l) "Highly Noxious Stimuli" means a Level III

Intervention applying an extremely undesirable, but not harmful, sensory event that exceeds the criteria of Mildly Noxious Stimuli.

(m) "Level I Intervention" means positive, unregulated procedures such as prevention strategies, reinforcement strategies, positive teaching and training strategies, redirecting, verbal instruction, withholding reinforcement, Extinction, Non-exclusionary Time-out/Contingent Observation, and simple correction.

(n) "Level II Intervention" means intrusive procedures that may be used in pre-approved Behavior Support Plans or as Emergency Behavior Interventions. Approved interventions include Enforced Compliance, Manual Restraint, Exclusionary Time-out, Mildly Noxious Stimuli, and Emergency Rights Restrictions.

(o) "Level III Intervention" means intrusive procedures that are only used in pre-approved Behavior Support Plans. Approved interventions include Time-out rooms, Mechanical Restraint, Highly Noxious Stimuli, overcorrection, Contingent Rights Restrictions, Response Cost, and Satiation.

(p) "Manual Restraint" means a Level II Intervention using physical force in order to hold a Person to prevent or limit movement.

(q) "Mechanical Restraint" means a Level III Intervention that is any device attached or adjacent to the Person's body that cannot easily be removed by the Person and restricts freedom of movement. Mechanical restraint devices may include, but are not limited to, gloves, mittens, helmets, splints, and wrist and ankle restraints. For purposes of this Rule, Mechanical Restraints do not include:

(i) Safety devices used in typical situations such as seatbelts or sporting equipment.

(ii) Medically prescribed equipment used as positioning devices, during medical procedures, to promote healing, or to prevent injury related to a health condition (i.e. helmets used for Persons with severe seizures).

(r) "Mildly Noxious Stimuli" means a Level II Intervention applying a slightly undesirable sensory event such as a verbal startle or loud hand clap.

(s) "Non-exclusionary Time-out/Contingent Observation" means a Level I Intervention in which a Person voluntarily moves to a designated area for less than ten minutes for the purpose of regaining self-control or observing others demonstrating appropriate actions.

(t) "Positive Behavior Supports" means the use of Behavior Interventions that achieve socially important behavior change. The supports address the functionality of the problem and result in outcomes that are acceptable to the Person, the family, and the community. Supports focus on prevention and teaching replacement behavior.

(u) "Overcorrection" means a Level III Intervention requiring a Person to repeatedly restore an environment to its original condition or repeating an alternate behavior.

(v) "Reinforcer" means anything that occurs following a behavior that increases or strengthens that behavior.

(w) "Response Cost" means a Level III Intervention removing previously obtained rewards, such as tokens, points, or activities, upon the occurrence of a problem. Removal of personal property is not approved.

(x) "Satiation" means a Level III Intervention that presents an overabundance of a reinforcer to promote a reduction in the occurrence of the problem. Satiation is not used with Enforced Compliance.

(y) "State Behavior Review Committee" means a group of professionals with training and experience in Positive Behavior Supports and applied behavior analysis. The committee reviews and approves Behavior Support Plans to ensure the least intrusive and most effective interventions are used.

(z) "Time-out Room" means a Level III Intervention

placing a Person in a specifically designed, unlocked room. The Person is prevented from leaving the room until pre-determined time or behavior criteria are met.

R539-4-4. Levels of Behavior Interventions.

(1) The remainder of this rule applies to all Division staff and Providers, but does not apply to employees hired for Self-Administered Services.

(2) All Behavior Support Plans shall be implemented only after the Person or Guardian gives consent and the Behavior Support Plan is approved by the Team.

(3) All Behavior Support Plans shall incorporate Positive Behavior Supports with the least intrusive, effective treatment designed to assist the Person in acquiring and maintaining skills, and preventing problems.

(4) Behavior Support Plans must:

- (a) Be based on a Functional Behavior Assessment.
- (b) Focus on prevention and teach replacement behaviors.
- (c) Include planned responses to problems.
- (d) Outline a data collection system for evaluating the effectiveness of the plan.

(5) All Provider staff involved in implementing procedures outlined in the Behavior Support Plan shall be trained and demonstrate competency prior to implementing the plan.

(a) Completion of training shall be documented by the Provider.

(b) The Behavior Support Plan shall be available to all staff involved in implementing or supervising the plan.

(6) Level I interventions may be used informally, in written support strategies, or in Behavior Support Plans without approval.

(7) Behavior Support Plans that only include Level I Interventions do not require approval or review by the Behavior Peer Review Committee or Provider Human Rights Committee.

(8) Level II Interventions may be used in pre-approved Behavior Support Plans or emergency situations.

(9) Level III Interventions may only be used in pre-approved Behavior Support Plans.

(10) Behavior Support Plans that utilize Level II or Level III Interventions shall be implemented only after Positive Behavior Supports, including Level I Interventions, are fully implemented and shown to be ineffective. A rationale on the necessity for the use of intrusive procedures shall be included in the Behavior Support Plan.

(11) Time-out Rooms shall be designed to protect Persons from hazardous conditions, including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets. The rooms shall have adequate lighting and ventilation.

(a) Doors to the Time-out Room may be held shut by Provider staff, but not locked at any time.

(b) Persons shall remain in Time-out Rooms no more than 2 hours per occurrence.

(c) Provider staff shall monitor Persons in a Time-out Room visually and auditorially on a continual basis. Staff shall document ongoing observation of the Person while in the Time-out Room at least every fifteen minutes.

(12) Time-out Rooms shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Persons shall be placed in the Time-out Room immediately following a previously identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for placement in a Time-out Room.

(c) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria.

(13) Mechanical restraints shall ensure the Person's safety in breathing, circulation, and prevent skin irritation.

(a) Persons shall be placed in Mechanical Restraints immediately following the identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for Mechanical Restraints.

(14) Mechanical Restraints shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria. The plan shall also specify maximum time limits for single application and multiple use.

(b) Behavior Support Plans shall include specific requirements for monitoring the Person, before, during, and after application of the restraint to ensure health and safety.

(c) Provider staff shall document their observation of the Person as specified in the Behavior Support Plan.

(15) Manual restraints shall ensure the Person's safety in breathing and circulation. Manual restraint procedures are limited to the Mandt System (Mandt), the Professional Assault Response Training (PART), or Supports Options and Actions for Respect (SOAR) training programs. Procedures not outlined in the programs listed above may only be used if pre-approved by the State Behavior Review Committee.

(16) Behavior Support Plans that include Manual Restraints shall provide information on the method of restraint, release criteria, and time limitations on use.

R539-4-5. Review and Approval Process.

(1) The Behavior Peer Review Committee shall review and approve the Behavior Support Plan annually. The plan may be implemented prior to the Behavior Peer Review Committee's review; however the review and approval must be completed within 60 calendar days of implementation.

(2) The Behavior Peer Review Committee's review and approval process shall include the following:

(a) A confirmation that appropriate Positive Behavior Supports, including Level I Interventions, were fully implemented and revised as needed prior to the implementation of Level II or Level III Interventions.

(b) Ensure the technical adequacy of the Functional Behavior Assessment and Behavior Support Plan based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(c) Ensure plans are in place to attempt reducing the use of intrusive interventions.

(d) Ensure that staff training and plan implementation are adequate.

(3) The Provider Human Rights Committee shall approve Behavior Support Plans with Level II and Level III Interventions annually. Review and approval shall focus on rights issues, including consent and justification for the use of intrusive interventions.

(4) The State Behavior Review Committee must consist of at least three members, including representatives from the Division, Provider, and an independent professional having a recognized expertise in Positive Behavior Supports. The Committee shall review and approve the following:

(a) Behavior Support Plans that include Time-out Rooms, Mechanical Restraints or Highly Noxious Stimuli.

(b) Behavior Support Plans that include forms of Manual Restraint or Exclusionary Time-out used for long-term behavior change and not used in response to an emergency situation.

(c) Behavior Support Plans that include manual restraint not outlined in Mandt, PART, SOAR, Safety Care, or CPI training programs.

(5) The Committee shall determine the time-frame for follow-up review.

(6) Behavior Support Plans shall be submitted to the Division's state office for temporary approval prior to implementation pending the State Behavior Review Committee's review of the plan.

(7) Families participating in Self-Administered Services may seek State Behavior Review Committee recommendations, if desired.

R539-4-6. Emergency Behavior Interventions.

(1) Emergency Behavior Interventions may be necessary to prevent clear and imminent threat of injury or property destruction during emergency situations.

(2) Level I Interventions shall be used first in emergency situations, if possible.

(3) The least intrusive Level II Interventions shall be used in emergency situations. The length of time in which the intervention is implemented shall be limited to the minimum amount of time required to resolve the immediate emergency situation.

(4) Each use of Emergency Behavior Interventions and a complete Emergency Behavior Intervention Review shall be documented by the Provider on Division Form 1-8 and forwarded to the Division, as outlined in the Provider's Service Contract with the Division.

(a) The Emergency Behavior Intervention Review shall be conducted by the Provider supervisor or specialist and staff involved with the Emergency Behavior Intervention. The review shall include the following:

(i) The circumstances leading up to and following the problem.

(ii) If the Emergency Behavior Intervention was justified.

(iii) Recommendations for how to prevent future occurrences, if applicable.

(5) The Person's Support Coordinator shall review Form 1-8 received from Providers and document the follow-up action.

(6) If Emergency Behavior Interventions are used three times, or for a total of 25 minutes, within 30 calendar days, the Team shall meet within ten business days of the date the above criteria are met to review the interventions and determine if:

(a) A Behavior Support Plan is needed;

(b) Level II or III Interventions are required in the Behavior Support Plan;

(c) Technical assistance is needed;

(d) Arrangements should be made with other agencies to prevent or respond to future crisis situations; or

(e) Other solutions can be identified to prevent future use of Emergency Behavior Interventions.

(7) The Provider's Human Rights Committee shall review each use of Emergency Behavior Interventions.

KEY: people with disabilities, behavior

December 30, 2013

Notice of Continuation December 17, 2009

62A-5-102

62A-5-103

R539. Human Services, Services for People with Disabilities.**R539-10. Short-Term Limited Waiting List Services.****R539-10-1. Purpose and Authority.**

- (1) The purpose of this rule is to provide:
- (a) procedures and standards for the determination of eligibility for persons on the waiting list to receive short-term, limited services from the Division.
- (2) This rule is authorized by Subsections 62A-5-102(2); 62A-5-102(7)(c).

R539-10-2. Definitions.

- (1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.
- (2) In addition:
- (a) "Active Status" means a person has a current needs assessment score and is on the Division's waiting list.
- (b) "Respite" is a service provided in a person's residence or other approved residential setting, designed to give relief to or during the absence of a person's primary caregiver.

R539-10-3. Eligibility.

- (1) A person is eligible for short-term limited waiting list services if:
- (a) the person has met eligibility criteria for non-waiver services as set forth in R539-1;
- (b) the person is not receiving ongoing services with the Division; and
- (c) the person is currently in active status on the Division's waiting list.

R539-10-4. Limitations.

- (1) Funds granted must be used during the fiscal year in which they are granted, beginning July 1st of the year granted and ending June 30th of the following year.
- (a) If there is no plan to use the funds or if the funds are unused, those funds will return to the Division and may be reallocated to another eligible person.
- (b) In the case of short-term limited family skill building and preservation classes, openings that become available due to families dropping out of the program or other circumstances, shall be filled if possible by additional families from the same geographical area that meet all eligibility criteria.

R539-10-5. Selection for Short-Term Limited Respite Care Services.

- (1) Nonlapsing Funds may be available to provide short-term limited respite care services for persons determined eligible who are on the Division's waiting list.
- (2) When the Division determines that sufficient funds are available to provide short-term limited respite care services, persons will be selected to receive short-term limited respite care according to the following method:
- (a) The Division shall identify all persons on the waiting list who have indicated that they are in need of respite services;
- (b) Persons identified by the Division as needing respite services shall be grouped together, from which the Division shall use a random selection process to select persons to receive short-term limited respite services.

R539-10-6. Short-Term Limited Respite Care Provider Options.

- (1) Short-term limited respite care services may be provided through either the Self-Administered Services Model or the traditional Agency-Based Provider Model or a combination of both.
- (2) If the person elects the Self-Administered Services Model to provide short-term limited respite care, the following requirements must be met:
- (a) the person must select a fiscal agent, through which all

payments to employees must be made;

- (b) the person must adhere to all additional requirements set forth in Section R539-5.

R539-10-7. Additional Participation Requirements for Short-Term Limited Family Skill Building and Preservation Classes.

- (1) In order to be eligible for participation in short-term family skill building and preservation classes the family of the eligible person must agree to the following additional requirements:
- (a) To sign a participation agreement stating that the family will participate fully in the offered short-term family skill building and preservation classes;
- (b) To have the person's waiting list needs assessment re-evaluated within six months of completing participation in the short-term family skill building and preservation classes;

R539-10-8. Selection and Enrollment for Short-Term Limited Family Skill Building and Preservation Classes.

- (1) Nonlapsing Funds may be available to provide short-term limited family skill building and preservation classes for persons determined eligible who are on the Division's waiting list.
- (2) When the Division determines that sufficient funds are available to provide short-term limited family skill building and preservation classes, persons will be selected to participate in the family skill building and preservation classes according to the following parameters:
- (a) The Division shall advertise an open enrollment period to all persons with an active status on the Division's waiting list;
- (b) During the open enrollment period, the Division will accept applications for a two week period from persons or their families wishing to participate;
- (i) Additional enrollment periods may be offered as the Division deems necessary;
- (c) Applications will be reviewed to determine an applicant's eligibility;
- (d) Eligible applicants will be admitted into the program in the order in which they have applied to participate, in the respective geographical area in which they live;
- (i) If the number of applications for the respective geographical area exceeds 300 during the open enrollment period, all eligible program applicants will be grouped together from which participants will be selected to participate using a random selection process;

R539-10-9. Short-Term Limited Service Brokering Services.

- (1) Nonlapsing Funds may be available to provide short-term limited service brokering services for persons determined eligible who are on the Division's waiting list.
- (2) When the Division determines that sufficient funds are available to provide short-term limited service brokering services, persons will be selected to receive short-term limited service brokering services according to need as determined from information supplied to the Division.

KEY: waiting lists, family preservation, respite, service brokering

December 30, 2013

62A-5-102(7)

R547. Human Services, Juvenile Justice Services.**R547-6. Youth Parole Authority Policies and Procedures.****R547-6-1. Authority.**

(1) Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-6-2. Definitions.

(1) Detainer is an order to hold a youth for another governmental agency.

R547-6-3. Administration and Organization.

Section 62A-7-501 establishes a Youth Parole Authority within the Division of Juvenile Justice Services which has responsibility for parole release, rescission, revocation, and termination of parole for youth offenders committed to the Division for secure confinement.

(1) The Authority is established as an autonomous organization.

(2) The following criteria shall be utilized in the selection and appointment of the Authority members:

(a) A member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(b) A member shall not be an employee of the Department of Human Services, other than in the capacity as a member of the Authority, and may not hold any public office during the tenure of the appointment. A member shall not hold a position in the State's juvenile justice system or be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor during the tenure of the appointment.

(c) The membership shall represent, to the extent possible, a diversity of the population under the jurisdiction of the Division.

(d) The membership shall be composed of individuals with the capacity to conduct hearings in a professional manner, develop appropriate policies and procedures, be sensitive to both legal and treatment oriented issues and promote credibility in the parole release process.

(3) Youth Parole Authority members shall be appointed for terms of four years by the Governor with the consent of the Senate.

(4)(a) The members of the Youth Parole Authority shall elect the chairperson and vice-chairperson of the Authority by majority vote for terms of one year. A second vice-chairperson shall be designated by the Authority members present at hearings in which the chairperson and vice-chairperson are absent.

(b) The duties of the chairperson are as follows:

(i) to preside at meetings and hearings and in the chairperson's absence the first vice-chairperson shall act. In the absence of the chairperson and first vice-chairperson, the second vice-chairperson shall preside at the meeting or hearing.

(ii) to act as official spokesperson for the Authority with the concurrence of the Authority;

(iii) to work closely with the Administrative Officer in the administration of the Authority and in coordinating with the Division.

(5) Any member of the Authority may be removed from office for cause.

(6) The Authority members may not receive compensation or benefits for their service, but may receive per diem and travel expenses in accordance with section 63A-3-106 and 107.

(7) The Division Director shall ensure that time is available for Division members to participate in training and administrative meetings related to Authority and Division matters.

(8) The Authority has the power to require that general and specific conditions of parole be followed in the supervision of

parolees.

(9) The Authority has the statutory power, Section 62A-7-501(12), to secure prompt and full information relating to youth offenders committed to the Division from the staffs of the secure facilities, regional offices, community placements, and the juvenile court.

(10) The Authority has statutory power, Section 62A-7-504, to cause the arrest of parolees and the power to revoke parole.

(11) The Authority has the designated power to terminate youthful offenders from parole.

(12) The Authority shall establish policies and procedures for its governance, meeting, hearings, the conduct of proceedings before it, the parole of youth offenders, and the general conditions under which parole may be granted, rescinded, revoked, modified, and terminated. The Authority's policies and procedures are subject to the approval of the Board of Juvenile Justice Services.

(13) The policy and procedures manual of the Authority will be readily available to youth in secure facilities, parolees, staff and the public.

(14) The Authority shall request any needed legal assistance from the Attorney General's Office.

(15) The position of an Administrative Officer shall be established to carry out day to day functions and to implement the policies and procedures of the Authority.

(16) Required staff shall be appointed to the Authority.

R547-6-4. Hearings.

A case file shall be maintained on each youth that comes before the Authority. Materials in the case files are clearly identified as to source, verification and confidentiality.

(1) For the proper operation of the Authority and protection of those furnishing information and for the best interests of youth offenders and society, all written documents, evaluations or medical reports, opinions, investigative reports which contain or are based upon information that is, either privileged by statute or court rule or order of the Authority, or of such confidential nature that the Authority concludes the rights and reputations of particular person or persons pending the order, decision, opinions or submitting the documents would be jeopardized or threatened, or the public interest would not be served, shall be classified as controlled and not be made available to the youth offender or his representative or for public inspection. Requests and reasons for any exceptions shall be submitted in a petition to the Authority, which may upon good cause grant the request.

(2) The Authority may order, when necessary, examinations and opinions by certified psychiatrists or psychologists. Certified members of the appropriate professions shall be available for such examinations and opinions.

(3) In order to have adequate time for case preparation, the Authority will be provided, in advance of hearings, with the necessary case materials and information to make appropriate decisions.

(4) A calendar shall be prepared in advance of all parole hearings.

(5) The number of full hearings scheduled for an Authority panel in a single day should be limited to 12 cases.

(6) Youth offenders shall be notified in writing at least 14 calendar days in advance of initial and parole review hearings and shall be specifically advised as to the purpose of the hearing.

(7) The Authority hearings are not open to the public; however, the Authority has the discretion to admit to the hearings any persons who may serve in the best interest of the youth.

(8) Hearings by the Authority shall be conducted in a secure environment and in private rooms appropriately

furnished and of adequate size and comfort.

(9) Youth offenders may have assistance from qualified persons for an effective case presentation.

(10) Youth offenders shall have legal representation at parole revocation hearings. Legal representation shall not be permitted at initial, parole review, progress review, and rescission hearings. Legal representation shall be at the discretion of the hearing officer at preliminary hearings. Legal representation shall be at the discretion of the Authority at special hearings.

(11) It is the policy of the Authority that all youth offenders shall have a personal appearance before the Authority, which provides for ample opportunity for the expression of the youth's views, particularly in the situation where parole may be denied.

(12) A record shall be made of all proceedings and findings made by the Authority.

(13) The youth offender will be notified verbally of the Authority's decisions at the conclusion of each hearing. All decisions shall be supported in writing and forwarded to the youth within 14 days of the hearing date.

(14) The youth offender, parent, or legal guardian of the youth offender may appeal any decision of the Authority regarding parole release or revocation to the Executive Director of the Department of Human Services or designee.

(15)(a) The criteria employed by the Authority in its decision making process are available in written form in the administrative office of the Division of Juvenile Justice Services and are specific enough to permit consistent application to individual cases.

(b) Youth offenders committed to the Division for secure confinement may be released by the Authority earlier than their recommended guideline, when the Division's secure facilities are at maximum capacity.

(16) It is the policy of the Authority that all youth offenders shall be automatically scheduled for an initial hearing before the Authority within 90 days of commitment to a secure facility.

(17) It is the policy of the Authority that a youth offender shall have a progress review hearing held 180 days from the date of the initial hearing, when a parole review hearing has not been scheduled due to lengthy guideline considerations.

(18) All youth offenders shall have a parole review hearing before the Authority prior to release. The parole review hearing shall be scheduled within 180 days of either the initial hearing or the progress review hearing. A date for parole release shall be established at the parole review hearing when appropriate.

(19) The parole release date established by the Authority shall remain in effect except upon findings by the Authority that cause exists for the rescission of said date.

(20) The youth can petition the Authority for reconsideration of an earlier decision, including release prior to the original parole date.

(21) Each parolee shall receive and sign a written copy of the parole agreement.

(22) The parole agreement can be amended upon approval by the Authority.

(23) The Authority does not accept the presence of a detainer as an automatic bar to release; rather, the Authority pursues the basis of any such detainer, and releases the youth per detainer where appropriate.

(24) The Authority has power to terminate youth offenders from parole supervision. Youth are not continued on active parole after one year without cause.

regarding all parole violations.

(2) Revocation proceedings will be initiated by the region office when there is probable cause that a parole violation(s) has occurred and that such proceedings are in the best interest of the youth or the community.

(3) A pre-revocation hearing may be held by the Administrative Officer or designee to determine whether there is probable cause to return a youth to a secure facility for a parole violation hearing.

(4) The Administrative Officer in behalf of the Authority may issue warrants of arrest.

(5) An alleged parole violator will have a revocation hearing within 21 days of the pre-revocation hearing. Legal representation is required at revocation hearings.

**KEY: juvenile corrections, parole
December 31, 2013**

Notice of Continuation May 16, 2012

**62A-7
63G-2-304**

R547-6-5. Arrest and Revocation.

(1) An Incident Report Form will be used to convey information to the Authority regarding parolees. The assigned parole officer is responsible to keep the Authority informed

**R547. Human Services, Juvenile Justice Services.
R547-12. Division of Juvenile Justice Services Classification
of Records.**

R547-12-1. Authority.

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

**R547-12-2. Division of Juvenile Justice Services
Classification of Records.**

(1) The following classification scheme applies to the youth records of the Division of Juvenile Justice Services:

(a) Quality Service Review Case Studies and Reports are classified as protected information.

(b) Plethysmograph, psychological, and psychiatric reports are classified as controlled information. Other records produced by the Division of Juvenile Justice Services or its contractors are controlled if the agency reasonably believes that releasing the information in the record would be detrimental to the subject's mental health or to the safety of any individual, or if releasing the information would constitute a violation of normal professional and medical ethics.

(c) Progress reports, quarterly reports, reports to the Court, Parole Board reports, and correspondence are classified as private information, as are all other records in the case file that originate with the Division.

(d) Police reports, juvenile court legal and social information, school reports, and all other documents generated by agencies other than Juvenile Justice Services shall retain the classification assigned to them by the agency from which they were received.

**KEY: juvenile corrections
December 31, 2013
Notice of Continuation May 1, 2012**

**62A-7
63G-2-101**

R590. Insurance Administration.**R590-248. Mandatory Fraud Reporting Rule.****R590-248-1. Authority.**

This rule is promulgated pursuant to Section 31A-2-201(3)(a), which authorizes rules to implement the Insurance Code and 31A-31-110, which authorizes a rule to provide a process by which a person shall report a fraudulent insurance act.

R590-248-2. Purpose and Scope.

- (1) The purposes of this rule are to:
- (a) describe the required elements in a mandatory fraud report; and
 - (b) establish a reporting process for fraud reports.
- (2) This rule applies to:
- (a) all insurers doing the business of insurance in Utah; and
 - (b) all auditors employed by a title insurer doing the business of title insurance in Utah.

R590-248-3. Mandatory Elements of a Fraud Report.

A mandatory fraud report shall:

- (1) be in writing;
 - (2) provide information in detail relating to:
 - (a) the fraudulent insurance act; and
 - (b) the perpetrator of the fraudulent insurance act; and
 - (3) state whether the person submitting the report of a fraudulent insurance act also reported the fraudulent insurance act in writing to:
 - (a) the attorney general;
 - (b) a state law enforcement agency;
 - (c) a criminal investigative department or agency of the United States;
 - (d) a district attorney; or
 - (e) the prosecuting attorney of a municipality or county;
- and
- (4) state the agency to which the person reported the fraudulent insurance act.

R590-248-4. Mandatory Fraud Reporting Process.

(1) The following persons shall report a fraudulent insurance act to the commissioner if the person has a good faith belief on the basis of a preponderance of the evidence that a fraudulent insurance act is being, will be, or has been committed by:

- (a) a person other than the person making the report;
 - (b) an insurer; or
 - (c) an auditor that is employed by a title insurer.
- (2) An auditor employed by a title insurer shall report a fraudulent act to the title insurer and the title insurer shall report the fraudulent act in accordance with this subsection.
- (3) An insurer shall submit mandatory fraud reports electronically.
- (4) An insurer shall report a fraudulent insurance act by:
- (a) submitting a report to the commissioner using the National Insurance Crime Bureau (NICB) fraud reporting system; or
 - (b) submitting a report directly to the commissioner using email sent to mandatoryreporting@utah.gov.

R590-248-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-248-6. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-248-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance, mandatory fraud reporting
December 30, 2008**

Notice of Continuation December 23, 2013

**31A-2-201
31A-31-110**

R590. Insurance, Administration.**R590-249. Secondary Medical Condition Exclusion.****R590-249-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-22-613.5(3), authorizing the commissioner to adopt a rule to implement disclosure requirements and provide examples of coverage limitations or exclusions, including a secondary medical condition.

R590-249-2. Purpose and Scope.

The purpose of this rule is to establish examples of limitations or exclusions from coverage, including related secondary conditions. The examples provided in R590-249-4 are not all inclusive.

R590-249-3. General Instructions.

The insurer shall provide a clear written statement that discloses the policy limitations and exclusions, including related secondary medical conditions that are set forth in the policy:

- (1) upon application; and
- (2) when requested by the insured.

R590-249-4. Examples.

The following policy limitation or exclusion examples are not all inclusive:

- (1) charges in connection with reconstructive or plastic surgery that may have limited benefits, such as, a chemical peel that does not alleviate a functional impairment;
- (2) complications relating to services and supplies for, or in connection with, gastric or intestinal bypass, gastric stapling, or other similar surgical procedure to facilitate weight loss, or for, or in connection with, reversal or revision of such procedures, or any direct complications or consequences thereof;
- (3) complications by infection from a cosmetic procedure, except in cases of reconstructive surgery:
 - (a) when the service is incidental to or follows a surgery resulting from trauma, infection or other diseases of the involved part; or
 - (b) related to a congenital disease or anomaly of a covered dependent child that has resulted in functional defect;
- (4) complications relating to services, supplies or drugs which have not yet been approved by the United States Food and Drug Administration (FDA) or which are used for purposes other than the FDA-approved purpose; or
- (5) complications that result from an injury or illness resulting from active participation in illegal activities.

R590-249-5. Penalties.

Any insurer found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to the penalties as provided under Section 31A-2-308.

R590-249-6. Enforcement Date.

The commissioner will begin enforcing this rule July 1, 2009.

R590-249-7. Severability.

If any provision or portion of this rule or the application of it to any person, company or circumstance is for any reason held to be invalid, the remainder of the rule or the applicability of the provision to other persons, companies, or circumstances shall not be affected.

KEY: health insurance**December 31, 2008****31A-22-613.5****Notice of Continuation December 23, 2013**

R592. Insurance, Title and Escrow Commission.
R592-2. Title Insurance Administrative Hearings and Penalty Imposition.

R592-2-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-404(2)(e) and (h), to provide the process for conducting or delegating a title administrative hearing and imposing a penalty for a violation of statute or rule.

R592-2-2. Purpose and Scope.

- (1) The purposes of this rule are:
 - (a) to establish procedures for the commission:
 - (i) to delegate to the commissioner's administrative law judge the conduct of an administrative hearing to resolve a title insurance matter; or
 - (ii) to conduct an administrative hearing to resolve a title insurance matter; and
 - (b) to establish procedures for the commission,
 - (i) to impose penalties; and
 - (ii) for the commissioner to concur with the penalties imposed.
- (2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing the business of title insurance, and continuing education providers submitting title continuing education programs for approval.

R592-2-3. Definitions.

For purposes of this rule, the commission adopts the definitions set forth in Utah Code Annotated (U.C.A.) Title 31A and the following:

- (1) "Commission" means the Title and Escrow Commission.
- (2) "Commissioner" means Utah's insurance commissioner.
- (3) "Title insurance matter" means a matter related to:
 - (a) title insurance; and
 - (b) an escrow conducted by an individual title insurance producer.

R592-2-4. Title Insurance Matters Referred for Enforcement.

- (1) A title insurance matter referred for enforcement will be resolved by:
 - (i) an informal adjudicative action pursuant to R592-2-5;
 - (ii) a stipulation and order issued by the commissioner; or
 - (iii) an administrative hearing conducted either by the commission or the commissioner's administrative law judge pursuant to R592-2-6.

R592-2-5. Imposition of a Penalty When an Informal Adjudicative Proceeding Is Used to Resolve a Title Insurance Matter.

- (1) If the commissioner uses an informal adjudicative proceeding as set forth in 63G-4-203 and R590-160 to resolve a violation listed in Table 1 below, the commissioner shall use the penalties imposed by the commission in this Section.
- (2) The commission shall impose the following penalties on title licensees for the violations listed in Table 1 below when resolved through an informal adjudicative proceeding.

Table 1

Violation	1st Proceeding	2nd Proceeding
Failure to complete required continuing education hours.	Individual: \$1,000; Agency: n/a	Individual: \$2,000; Agency: n/a
Failure to respond to an inquiry of the commissioner.	Individual: \$500; Agency: \$750	Individual: \$1,000; Agency: \$1,500
Failure to file a	Individual: n/a	Individual: n/a;

required rate, form, or report.	Agency: \$1,000	Agency: \$2,000
Late filing of a required rate, form, or report.	Individual: n/a; Agency: \$750	Individual: n/a; Agency: \$1,500
Failure to charge or collect a correct premium or a correct filed fee.	Individual: \$1,000; Agency: \$2,500	Individual: \$2,000; Agency: \$5,000
Charging or collecting a non-filed required fee.	Individual: \$1,000; Agency: \$2,500	Individual: \$2,000; Agency: \$5,000
Failure to pay assessment when due.	Individual: \$500; Agency: \$750	Individual: \$1,000; Agency: \$1,500

R592-2-6. Use of an Administrative Hearing to Resolve a Title Insurance Matter.

- (1) When the commissioner sets a date for an administrative hearing to resolve a title insurance matter, the commissioner shall inform the commission of the hearing date.
- (2) After being informed of a hearing date, the commission shall:
 - (a) delegate the conduct of the administrative hearing to the commissioner's administrative law judge; or
 - (b) conduct the administrative hearing.
- (3) For an administrative hearing conducted by the commission, the commission shall:
 - (a) accept the date, time and place set by the commissioner or set a different date, time, and place for the administrative hearing;
 - (b) cause notification to be sent to the respondent(s), the commissioner's administrative law judge, and the commissioner's enforcement attorney of the date, time, and place of the administrative hearing;
 - (c) conduct the hearing pursuant to R590-160;
 - (d) impose penalties in accordance with Sections 31A-2-308, 31A-23a-111, 31A-23a-112, 31A-26-213, and 31A-26-214, subject to the concurrence of the commissioner; and
 - (e) issue an Order on Hearing.
- (4) The commissioner's administrative law judge shall assist the commission in its conduct of an administrative hearing.

R592-2-7. Imposition of Penalties.

- The commission shall impose a penalty as follows:
- (1) for an informal adjudicative proceeding, a penalty shall be imposed in accordance with Table 1 in R592-2-5;
 - (3) for an administrative hearing conducted by the commissioner's administrative law judge pursuant to R592-2-6 (2)(a), the commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner; or
 - (4) for an administrative hearing conducted by the commission, the commission shall impose a penalty, subject to the concurrence of the commissioner.

R592-2-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R592-2-9. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

KEY: title insurance
May 1, 2013

31A-2-402

Notice of Continuation September 15, 2010

R592. Insurance, Title and Escrow Commission.**R592-5. Title Insurance Product or Service Approval for a Dual Licensed Title Licensee.****R592-5-1. Authority.**

This rule is promulgated pursuant to Sections 31A-2-404 and 31A-2-405, which direct the Title and Escrow Commission to make rules to administer the provisions related to title insurance.

R592-5-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the requirements for a dual licensed title licensee to obtain:

(a) approval from the insurance commissioner pursuant to Subsection 31A-2-405(2); and

(b) expedited approval from the Title and Escrow Commission pursuant to Subsection 31A-2-405(3).

(2) This rule applies to all title licensees and applicants for a title insurance license or renewal of a title insurance license.

R592-5-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301, 31A-2-402, and the following:

(1)(a) "Dual licensed title licensee" has the same meaning as set forth in 31A-2-402.

(b) "Dual licensed title licensee" does not mean:

(i) a title licensee who holds an inactive license under 31A-2-402(3)(b)(i), (ii) and (iii); or

(ii) a title licensee who holds an education provider certificate.

(2) "Need for expedited approval" means a significant hardship to the buyer or seller in the transaction.

(3) "Principal" means a person from whom a dual licensee has received compensation for submitting a transaction under one or more of his or her dual licenses. Examples include, but are not limited to, a mortgage company, a real estate broker, an agency title insurance producer, a builder, or a developer.

(4) "Title insurance product" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(5) "Title insurance service" has the same meaning as the definition of "escrow" found in Subsection 31A-1-301(56).

R592-5-4. Filing Requirements, Processes and Procedures.

(1) Only a dual licensed title licensee can file a request for approval for the provision of a title insurance product or service.

(2) A complete filing consists of:

(a) a filing fee pursuant to Section 31A-3-103; and either

(b) a "Dual Licensee Request For Approval for the Provision of a Title Insurance Product or Service" form; or

(c) a "Dual Licensee Request For Expedited Approval for the Provision of a Title Insurance Product or Service" form.

(3) A filing to request approval of a "Dual Licensee Request for Approval for the Provision of a Title Insurance Product or Service" form must:

(a) be sent electronically to the commissioner via email to pcfirms.uid@utah.gov; and

(b) include credit card information in the payment section of the form.

(4) An expedited filing to request approval of a "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form must:

(a) include a completed Section 6, Reason for Requesting Expedited Approval, on the "Dual Licensee Request for

Expedited Approval for the Provision of a Title Insurance Product or Service" form;

(b) be sent electronically to the Chair of the Title and Escrow Commission via email to pcfirms.uid@utah.gov; and

(c) include credit card information in the payment section of the form.

(5) Approval or disapproval will be sent to the filer via return email.

R592-5-5. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

R592-5-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Sections 31A-2-308 and 31A-2-405.

R592-5-7. Enforcement Date.

The commissioner will begin enforcing this rule 15 days after the rule's effective date.

KEY: title dual licensees**October 26, 2007****Notice of Continuation September 27, 2012****31A-2-404**

R592. Insurance, Title and Escrow Commission.**R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.****R592-6-1. Authority.**

This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer or individual title insurance producer.

R592-6-2. Purpose and Scope.

(1) The purpose of this rule is to identify certain practices, which the Commission finds creates unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title insurer, agency title insurance producer or individual title insurance producer.

(2) This rule applies to all title insurers, agency title insurance producers, individual title insurance producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R592-6-3. Definitions.

For the purpose of this rule the Commission adopts the definitions as set forth in Section 31A-1-301 and 31A-2-402, and the following:

(1) "Bona fide real estate transaction" means:

(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or

(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2) "Business Activities" shall include sporting events, sporting activities, musical and art events. In no case shall such business activities rise to the level of ceremonies, for example, award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

(3) "Business meals" shall include breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals raise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(i) buying or selling interests in real property; and

(ii) making loans secured by interests in real property.

(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.

(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Unfair Methods of Competition, Acts and Practices.

In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that providing or offering to provide any of the following benefits by parties identified in Section R592-6-2 to any client, either directly or indirectly, except as specifically allowed in Section R592-6-5 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(1) The furnishing of a title insurance commitment without one of the following:

(a) sufficient evidence in the file of the title insurer, agency title insurance producer or individual title insurance producer that a bona fide real estate transaction exists; or

(b) payment in full at the time the title insurance commitment is provided.

(2) The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) the filing of charges for escrow services with the Utah Insurance Commissioner (commissioner), which are less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services which are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title insurer's, title agency title insurance producer's, or individual title insurance producer's facilities, for example, conference rooms or meeting rooms, to a client or its trade association, for anything other than the providing of escrow or title services, or meetings related to such, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) The co-habitation or sharing of office space with a client of a title insurer, agency title insurance producer, or individual title insurance producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency title insurance producer or individual title insurance producer, for example,

secretary, clerk, messenger or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company subject to 31A-2-405 and R592-5.

(14) Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, or for the pre-payment of fees and charges of a client or party to the transaction, for example subordination, loan or HOA payoff request fees, whose services are required by any party or client to structure or complete a particular transaction. This subsection does not include the pre-payment of overnight delivery/mail fees that will be recovered through closing of a transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under Subsection R592-6-5(6). Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5(2) or otherwise providing things of value for promotional activities of a client. Title insurers, agency title insurance producers or individual title insurance producers may attend activities of a client if there is no additional cost to the title insurer, agency title insurance producer or individual title insurance producer, other than their own entry fees, registration fees, meals, and provided that these fees are no greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as providing a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

- (a) building plans;
- (b) construction critical path timelines;
- (c) "For Sale by Owner" lists;
- (d) surveys;
- (e) appraisals;
- (f) credit reports;
- (g) mortgage leads for loans;
- (h) rental or apartment lists; or
- (i) printed labels.

(19) Newsletters cannot be property specific or cannot highlight specific customers.

(20) A title insurer, agency title insurance producer or individual title insurance producer cannot provide a client access to any software accounts that are utilized to access real property information that the insurer, agency title insurance producer or individual title insurance producer pays for, develops, or pays to maintain. Closing software is exempt as long as it is used for a specific closing.

(21)(a) A title insurer, agency title insurance producer or individual title insurance producer cannot provide title or escrow services on real property where an existing or anticipated investment loan or financing has been or will be provided by said title insurer, agency title insurance producer or individual title insurance producer, including its owners or employees.

(b) Subsection (21)(a) does not apply to such transactions

involving seller financing.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurer, agency title insurance producer or individual title insurance producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency title insurance producer or individual title insurance producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.

(25) A donation may not be made to a charitable organization created, controlled or managed by a client.

(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8).

(27) Title insurers, agency title insurance producers or individual title insurance producers who have ownership in, or control of, other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R592-6-5. Permitted Advertising, Business Entertainment, and Methods of Competition.

Except as specifically prohibited in Section R592-6-4 above, the following are permitted:

(1) In addition to complying with the provisions of 31A-23a-402 and R590-130, Rules Governing Advertisements of Insurance, advertisement by title insurers, agency title insurance producers or individual title insurance producers must comply with the following:

(a) the advertisement must be purely self-promotional; and

(b) advertisement in official trade association publications are permissible as long as any title insurer, agency title insurance producer or individual title insurance producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

(2) A title insurer, agency title insurance producer or individual title insurance producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

(3) A title insurer, agency title insurance producer or individual title insurance producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency title insurance producer or individual title insurance producer may not expend more than \$15 per guest per open house. The open house may take place on or off the title insurer's, agency title insurance producer's or individual title insurance producer's premises but may not take place on a client's premises.

(4) A donation to a charitable organization must:

(a) not be paid in cash;

(b) if paid by a negotiable instrument, be made payable only to the charitable organization;

(c) be distributed directly to the charitable organization; and

(d) not provide any benefit to a client.

(5) A title insurer, agency title insurance producer or individual title insurance producer may distribute self-promotional items having a value of \$5 or less to clients, consumers and members of the general public. These self-

promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

(6) A title insurer, agency title insurance producer or individual title insurance producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

(a) the person representing the title insurer, agency title insurance producer or individual title insurance producer must be present during the business meal or business activity;

(b) there is a substantial title insurance business discussion directly before, during or after the business meal or business activity;

(c) the total cost of the business meal, the business activity, or both is not more than \$100 per person, per day;

(d) no more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency title insurance producer or individual title insurance producer in a single day; and

(e) the entire business meal or business activity may take place on or off the title insurer's, agency title insurance producer's or individual title insurance producer's premises, but may not take place on a client's premises.

(7) A title insurer, agency or producer may conduct continuing education programs that are approved by the appropriate regulatory agency, under the following conditions:

(a) the continuing education program shall address only title insurance, escrow or other topics directly related thereto;

(b) the continuing education program must be of at least one hour in duration;

(c) for each hour of continuing education, \$15 or less per person may be expended, including the cost of meals and refreshments; and

(d) no more than one such continuing education program may be conducted at the office of a client per calendar quarter.

(8) A title insurer, agency title insurance producer or individual title insurance producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of the client's immediate family with flowers or gifts not to exceed \$75.

(9) Any other advertising, business entertainment, or method of competition must be requested in writing and approved in advance and in writing by the Commission.

R592-6-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R592-6-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: title insurance
August 9, 2011**

31A-2-404

R592. Insurance, Title and Escrow Commission.**R592-8. Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing.****R592-8-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance and Section 31A-23a-204 which authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three year licensing requirement to license an agency title insurance producer.

R592-8-2. Purpose and Scope.

(1) The purposes of this rule are:

(a) to delegate to the Commissioner preliminary approval or denial of a request for exemption;

(b) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption;

(c) to provide a process to apply for a request for exemption; and

(d) to provide a process to appeal a denial of a request for exemption.

(2) This rule applies to all attorneys seeking an exemption under the provisions of 31A-23a-204.

R592-8-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-23a-102, the following definitions shall apply for the purposes of this rule:

(1) "Attorney" means a person licensed and in good standing with the Utah State Bar.

(2) "Real estate experience" includes:

(a) law firm transactional experience consisting of any or all of the following:

(i) real estate transactions, including drafting documents, reviewing and negotiating contracts of sale, including real estate purchase contracts (REPC), commercial transactions, residential transactions;

(ii) financing and securing construction and permanent financing;

(iii) title review, due diligence, consulting and negotiations with title companies, researching and drafting opinions of title, coordinating with title companies, pre-closing;

(iv) zoning, development, construction, homeowners associations, subdivisions, condominiums, planned unit developments;

(v) conducting closings; and

(vi) estate planning and probate-related transactions and conveyances.

(b) law firm litigation experience consisting of any or all of the following:

(i) foreclosures;

(A) judicial and non-judicial;

(B) homeowner association (HOA) lien foreclosure;

(ii) either side of homeowner vs HOA litigation;

(iii) state construction registry litigation - mechanics lien filing and litigation;

(iv) real estate disputes or litigation involving:

(A) a real estate contract;

(B) a boundary line;

(C) a rights of way and/or easement;

(D) a zoning issue;

(E) a property tax issue;

(F) a title issue or claim;

(G) a landlord/tenant issue; and

(F) an estate and/or probate litigation involving real property assets, claims, and disputes.

(c) non-law firm experience consisting of any or all of the following:

(i) real estate agent, broker, developer, investor;

(ii) mortgage broker;

(iii) general contractor;

(iv) professor or instructor teaching real estate licensing, real estate contracts, or real estate law;

(v) lender involved with any or all of the following real estate lending activities:

(A) lending;

(B) escrow; or

(C) foreclosure;

(vi) private lender;

(vii) in-house counsel involved in real estate transactions for bank, mortgage lender, credit union, title company, or agency title insurance producer;

(viii) employment with or counsel to a government agency involved in regulation of real estate, such as HUD, FHA, zoning, tax assessor, county recorder, insurance department, and Federal or state legislatures;

(ix) escrow officer;

(x) title searcher; or

(xi) surveyor; and

(d) other experience with real estate not included in (a), (b), and (c) above.

R592-8-4. Delegation of Authority.

The Commission hereby grants its preliminary concurrence to the approval or denial of a request for exemption requested by an attorney pursuant to 31A-23a-204 to the Utah Insurance Commissioner.

R592-8-5. Request for Exemption Process.

(1) An individual title licensee, who is an attorney as defined in this rule desiring to obtain an agency title insurance producer license under the exemption provided in 31A-23A-204(1)(c), shall make a request for exemption to the Commissioner in accordance with the requirements of this subsection.

(2) The applicant will submit a letter addressed to the Commission:

(a) requesting exemption from the licensing time period requirements in 31A-23a-204(1)(a)(i); and

(b) providing the following information:

(i) the applicant's name, mailing address and email, telephone number, and title license number;

(ii) a description of the applicant's real estate experience; and

(iii) why the applicant feels that experience qualifies the applicant for the exemption.

(3) The Commissioner will review the request for exemption within five business days of its receipt and

(a) request additional information from the applicant;

(b) preliminarily approve the request for exemption; or

(c) preliminarily disapprove the request for exemption.

(4) The Commissioner will report monthly to the Commission all preliminarily approved or denied requests for exemption received and reviewed since the previous Commission meeting.

(5) The Commission will concur or non-concur with the Commissioner's preliminary approval or denial of a request for exemption.

(6) If the Commissioner's preliminary denial of a request for exemption is concurred with by the Commission, the Commissioner will:

(a) notify the applicant of the denial; and

(b) inform the applicant of his right to agency review pursuant to R590-160.

(7) If the Commissioner's preliminary approval of a

request for exemption is concurred with by the Commission, the Commissioner will expeditiously notify the applicant to submit an electronic license application and pay the required fees and assessments.

R592-8-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-8-7. Enforcement Date.

The Commission will begin enforcing this rule on the rule's effective date.

R592-8-8. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

KEY: attorney exemption application process

June 25, 2009

31A-1-301
31A-2-308
31A-2-402
31A-2-404
31A-23a-102
31A-23a-204

R592. Insurance, Title and Escrow Commission.**R592-9. Title Insurance Recovery, Education, and Research Fund Assessment Rule.****R592-9-1. Authority.**

This rule is promulgated pursuant to Section 31A-41-202 which requires the Title and Escrow Commission to determine the amount of required assessments from individual title insurance producers and agency title insurance producers to provide funding for the recovery, education, and research fund.

R592-9-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to establish the amounts for individual title insurance producer assessments; and

(b) to establish the amounts for agency title insurance producer assessments.

(2) This rule applies to all individual title insurance producer applicants and licensees and all agency title insurance producer license applicants and licensees and any unlicensed person doing the business of title insurance.

R592-9-3. Establishing Assessment Amounts.

(1) Prior to July 1 of each year, the Commission shall establish the assessment amounts for:

(a) an initial producer license for an individual title insurance producer applicant;

(b) a renewal license for a licensed individual title insurance producer;

(c) an initial agency license for a title insurance agency applicant; and

(d) an annual assessment for a licensed agency title insurance producer.

(2) Annual licensed agency title insurance producer assessment amounts shall be established for the following four premium bands of title insurance premiums:

(a) Band A: \$0 to \$1 million;

(b) Band B: more than \$1 million to \$10 million;

(c) Band C: more than \$10 million to \$20 million; and

(d) Band D: more than \$20 million.

(3) The individual title insurance producer and agency title insurance producer assessment amounts shall be adopted by motion of the Commission.

(4) The adopted assessment amounts shall be posted on the Insurance Department's web page.

R592-9-4. Individual Title Insurance Producer Assessment.

(1) Beginning July 1, 2009:

(a) A person applying for an initial individual title insurance producer license or a licensed individual title insurance producer adding an additional title insurance line of authority shall pay an assessment not to exceed \$20.00 at the time of application; and

(b) a licensee renewing an individual title insurance producer license shall pay an assessment not to exceed \$20.00 at the time of application.

(2) An individual title insurance producer assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-5. Title Insurance Agency Assessment.

(1) Beginning July 1, 2008, a person applying for an initial title insurance agency license shall pay an assessment of \$1,000 at the time of application.

(2) Beginning January 1, 2009, a licensed title insurance agency shall pay an annual assessment.

(3) An agency's placement in one of the four assessment bands will be determined by an agency's title insurance written premium volume for the preceding calendar year as of December 31 of that calendar year.

(4) An agency title insurance producer's annual assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-9-7. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-9-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: title insurance recovery assessment
June 25, 2009**

**31A-2-308
31A-41-202**

R592. Insurance, Title and Escrow Commission.**R592-10. Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers.****R592-10-1. Authority.**

This rule is promulgated by the Title and Escrow Commission (Commission) pursuant to Subsections:

- (1) 31A-2-404(2)(d) which requires the Commission to determine by rule the assessment required by 31A-23a-415; and
- (2) 31A-23a-415(2)(d) which requires the Commission to establish the amount of costs and expenses that will be covered by the assessment.

R592-10-2. Purpose and Scope.

- (1) The purposes of this rule are to:
 - (a) establish the categories of costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance and the audits of agency title insurance producers;
 - (b) require the reporting by an agency title insurance producer and a title insurer of the mailing address and physical location of each office in each county where the agency title insurance producer or title insurer maintains an office;
 - (c) establish a calculation method for the calculation of the number of agency title insurance producer or title insurer offices; and
 - (d) determine the premium year used in calculating the assessment of title insurers.
- (2) This rule applies to all title insurers and agency title insurance producers.

R592-10-3. Definitions.

- (1) For the purpose of the rule the Commission adopts the definitions as set forth in Sections 31A-1-301, 31A-2-402, and the following:
 - (a) "Office" means each physical location of an agency title insurance producer or a title insurer in a county. Office includes any physical location that is open and available to the public.

R592-10-4. Costs and Expenses.

The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists:

- (1) will be for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature, including any approved salary increases or increases in benefits; and
- (2) will include the following expenses:
 - (a) salary and state paid benefits;
 - (b) travel expenses, including daily vehicle expenses;
 - (c) computer hardware and software expenses;
 - (d) e-commerce expenses;
 - (e) wireless communications expenses; and
 - (f) training expenses.

R592-10-5. Office Report.

- (1) An agency title insurance producer and a title insurer shall submit a completed Office Report Form not later than 30 days after the date a change described below occurs in a county where the agency title insurance producer or title insurer maintains an office:
 - (a) the opening or closing of an office;
 - (b) a change of address of an office; or
 - (c) a change in the manager of an office.
- (2) An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.
- (3) The department's Office Report Form, which is available on the department's website, shall be used to report

changes in offices.

- (a) An actual copy of the form may be used or may be adapted to a particular word processing system.
- (b) If adapted, the content, size, font, and format must be similar.

R592-10-6. Calculation Method for the Calculation of the Number of Agency Title Insurance Producer Offices.

- (1) All offices reported in accordance with Section R592-10-5 will be included in the calculation of the title insurance assessment.
- (2) An annual assessment calculation for an agency title insurance producer or title insurer that is calculated using incorrect numbers of offices because the number of offices was incorrectly reported will not be recalculated.
- (3) An agency title insurance producer or title insurer found to have improperly reported their offices may be subject to penalties in accordance with Section R592-10-9.

R592-10-7. Premium Year for Title Insurer Assessment.

- (1) The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year.
- (2) The direct premiums written shall be taken from the insurer's annual statements for that year.

R592-10-8. Assessment Payment.

- (1) An annual assessment shall be paid by the due date on the invoice.
- (2) Payments shall be made in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-10-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R592-10-10. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R592-10-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance**May 19, 2009****Notice of Continuation July 12, 2013****31A-2-201****31A-23a-415**

R592. Insurance, Title and Escrow Commission.
R592-14. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.

R592-14-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404(2).

R592-14-2. Purpose and Scope.

(1) The purpose of this rule is to prohibit intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

(2) This rule applies to all title insurers, agency title insurance producers and individual title insurance producers.

R592-14-3. Definitions.

For the purpose of this rule, the Commission adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance company or title insurance agent for which a request to record has been made by an insured party, title insurance company or title insurance agent.

R592-14-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(c)(i)(D).

R592-14-5. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-14-6. Severability.

If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it.

R592. Insurance, Title and Escrow Commission.**R592-15. Submission of a Schedule of Minimum Charges for Escrow Services.****R592-15-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which requires the Commission to make rules related to title insurance.

R592-15-2. Purpose and Scope.

(1) The purpose of this rule is to establish the procedures for filing a Schedule of Minimum Charges for Escrow Services pursuant to Section 31A-19a-209.

(2) This rule applies to all title insurers, agency title insurance producers and individual title insurance producers providing escrow services in Utah.

R592-15-3. Required Documents.

(1) The department requires that the documents described in this section shall be used for all filings, and are available on the department's web site, <http://www.insurance.utah.gov>.

(a) "Transmittal Document for Agency Title Insurance Producer or Individual Title Insurance Producer"; and

(b) "Schedule of Minimum Charges for Escrow Services."

R592-15-4. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402, and 31A-19a-102, the following definitions shall apply for the purpose of this rule.

(1) "Additional escrow services" means escrow settlement services that are rendered in excess of the escrow settlement services not specifically shown in the minimum escrow charges listed in the Schedule of Minimum Charges for Escrow Services.

(2) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(3) "Charge" means a dollar amount charged for a service rendered by a title insurer, agency title insurance producer, or individual title insurance producer.

(4) "Document preparation" means the preparation or compilation of documents in connection with escrow services.

(5) "Electronic filing" means:

(a) a filing submitted via the internet by a title insurer using the System for Electronic Rate and Forms Filings (SERFF); or

(b) a filing submitted via an email system by a agency title insurance producer or an individual title insurance producer not designated to an agency title insurance producer.

(6) "Escrow charge" means a dollar amount charged for an escrow service shown in the Schedule of Minimum Charges for Escrow services.

(7) "Escrow services" means those services related to settlements of real estate transactions.

(8) "File and use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(9) "File before use" means a filing can be used, sold, or offered for sale after it has been filed with the department, and a stated period of time has elapsed from the date filed.

(10) "Filer" means a person or entity who submits a filing.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The Filing Objection Letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(12) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted and which designates filing authority to the filer.

(13) "Long-term escrow" means a "For Benefit Of" (FBO) account that is for the purpose of payment collection and administration of seller-financed transactions, as described by an

escrow agreement.

(14) "Mini escrow" means an escrow settlement service conducted by an agency title insurance producer to clear a title, obtain payoffs and record necessary closing documents for a lender that performs his or her own closing service.

(15) "Minimum escrow fee" means the minimum amount that must be charged for escrow settlement services that are rendered.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Other settlement services" means additional services not specifically listed in the Schedule of Minimum Charges for Escrow Services.

(18) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department, with the reasons for rejection; and

(c) not considered filed with the department.

R592-15-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees are responsible for assuring compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected as incomplete and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will be charged a new filing fee.

(4) Prior filings will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in rating practices to affected consumers.

(6)(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 15 days after the date of the original filing was submitted to the department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R592-15-9.

(8) A filer must notify the department when withdrawing a previously filed rate.

R592-15-6. Filing Requirements.

(1) Only an individual who is authorized to act on behalf of the insurer, agency title insurance producer or individual title insurance producer can submit a filing.

(2)(a) An initial Schedule of Minimum Charges for Escrow Services filing is a file and use filing and is effective the day the initial schedule is filed.

(b) A revised Schedule of Minimum Charges for Escrow Services filing is a file before use filing and is effective:

(i) 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed; or

(ii) a date specified by the filer that is later than 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed.

(3) All filings must be submitted as an electronic filing via:

(a) email; or

(b) SERFF.

(4) Email Filing: A complete email filing consists of the following:

(a) an email with a title showing the name of the filer and stating that it is an escrow rate filing;

(b) Utah Transmittal Document for Agency Title Insurance Producer or Individual Title Insurance Producer, completed and containing the following items in the following order:

(i) completed filing description, contained in Section 9 of the transmittal document, with the following information presented in the order shown.

(A) Certification.

(I) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(II) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R592-15 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(III) A filing will be rejected if the certification is false, missing, or incomplete.

(IV) a certification that is false may subject the licensee to administrative action.

(B) Indicate if the filing is:

(I) new;

(II) replacing or modifying a previous submission, with changes described;

(III) previously rejected, with reasons for rejection and previous filing's submission date; or

(IV) previously objected to or prohibited, with reasons for resubmission.

(c) Schedule of Minimum Charges for Escrow Services, completed as follows:

(i) all blank fields must be completed;

(ii) if a listed service is not performed by a licensee, the field must show "N/A" or "Not Applicable"; and

(iii) The Schedule of Minimum Charges for Escrow Services shall not be altered.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a Letter of Authorization from the licensee must be attached.

(ii) The licensee remains responsible for making sure that the filing is in compliance with Utah laws and rules.

(e) As required by subsection 31A-19a-203(1)(e)(i), the rate filing fee must be received by the department within 5 days of the electronic submission or the filing will be rejected.

(5) SERFF Filing. A complete SERFF filing consists of the following:

(a) The completed description section on the general information tab, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R592-15 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Indicate if the filing is:

(A) new;

(B) replacing or modifying a previous submission, with changes described;

(C) previously rejected, with reasons for rejection, and previous filing's submission date; or

(D) previously objected to or prohibited, with reasons for resubmission.

(b) Schedule of Minimum Charges for Escrow Services completed as follows, and attached to the rate/rule schedule tab:

(i) all blank fields must be completed;

(ii) if a listed service is not performed by a licensee, the field must show "N/A" or "Not Applicable"; and

(iii) The Schedule of Minimum Charges for Escrow Services shall not be altered.

(c) Letter of Authorization.

(i) When the filer is not the licensee, a Letter of Authorization from the licensee must be attached.

(ii) The licensee remains responsible for making sure that the filing is in compliance with Utah laws and rules.

(d) As required by subsection 31A-19a-203(1)(e)(i), the rate filing fee must be received by the department within 5 days of the electronic submission or the filing will be rejected.

R592-15-7. Charges.

(1) Escrow Service Charges.

(a) In accordance with subsection 31A-19a-209(3), no charge may be filed or used that would cause the agency title insurance producer or individual title insurance producer to operate at less than the cost of doing the business of escrow.

(b) Only minimum escrow charges shown in the Schedule of Minimum Charges for Escrow Services must be filed.

(2) Other Settlement Services Charges.

(a) other settlement services charges will be used for services not specifically shown in the Schedule of Minimum Charges for Escrow Services.

(b) other settlement service charge must be filed as a per hour charge.

(3) Document Preparation Charge.

Only document charges shown in the Schedule of Minimum Charges for Escrow Services must be filed.

(4) Other services which are not specifically listed on the Schedule of Minimum Charges for Escrow services may be rendered provided a justifiable charge is made.

R592-15-8. Correspondence and Status Checks.

(1) When corresponding with the department, provide the following information to identify the original filing:

(a) type of filing;

(b) date of filing; and

(c) submission method; SERFF or email.

(2) A filer can request the status of its filing 60 days after the date of submission.

R592-15-9. Responses.

(1) A response to a Filing Objection Letter must include:

(a) a cover letter identifying the changes made; and

(b) revised documents with all changes highlighted.

(2)(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) Once the Order to Prohibit Use has been issued, a new filing is required if the company chooses to make the requested changes addressed in the original Filing Objection Letter. The new filing must reference the previously prohibited filing.

R592-15-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties under Section 31A-2-308.

R592-15-11. Enforcement Date.

The commissioner will begin enforcing this rule 15 days from the effective date of this rule.

R592-15-12. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title escrow filings
April 11, 2011

31A-2-404

R602. Labor Commission, Adjudication.**R602-5. Procedures for Resolving Disputes Regarding "Cooperation" and "Diligent Pursuit" Under Subsection 34A-2-413(6)(e)(iii) and Subsection 34A-2-413(9) Consistent with Utah Administrative Code Subsection R612-200-7(D)(4).****R602-5-1. Purpose, Authority and Scope.**

Section 34A-2-413(6)(e)(iii) states an administrative law judge shall make a final decision of permanent total disability based on an employer's failure to diligently pursue an approved reemployment plan. Section 34A-2-413(9) states that an administrative law judge shall dismiss a claim for benefits based on an employee's failure to fully cooperate with an approved reemployment plan. Under authority of section 34A-1-104, the Commission establishes these rules to govern hearings under this section. The provisions of R602-5 pertaining to applications for hearing pursuant to Section 34A-2-413(6)(e)(iii) and Section 34A-2-413(9) supersede the Administrative Rules contained in R602-2, R602-3, and R602-4 as to any actions brought pursuant to Section 34A-2-413(6)(e)(iii) and Section 34A-2-413(9).

R602-5-2. Mediation in Section 34A-2-413(6)(e)(iii) Cases.

Prior to filing an application for a final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii) the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-5-3. Pleadings and Discovery in Section 34A-2-413(6)(e)(iii) Cases.**A. Definitions.**

1. "Application for Hearing" means the Application for Hearing for Final Determination of Permanent Total Disability form (Adjudication Form 502), all supporting documents, and proof of service which together constitute the request for agency action for final determination of permanent total disability based on an employer's failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii).

2. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

3. "Supporting documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of lack of diligence as required by R612-200-7(D)(4) and all documents in any way related to reasons identified for the requested final determination of permanent total disability whether tending to prove or disprove the same.

4. "Proof of Service" means any of the following: 1) the respondent(s)'s signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employee and accompanied by a return receipt signed by the respondent(s); or 3) a return of service showing personal service of the Application and all supporting documents on the respondent(s) according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the employer's alleged failure to diligently pursue the reemployment plan pursuant to Section 34A-2-413(6)(e)(iii). The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the employee will produce the person as a witness at hearing.

6. "Petitioner" means the petitioner in the original case determining permanent total disability.

7. "Respondent" means the respondent(s) in the original case determining permanent total disability.

B. Application for Hearing.

1. Whenever a final determination of permanent total disability is requested by petitioner pursuant to Section 34A-2-413(6)(e)(iii), the burden rests with the petitioner to initiate agency action by filing a Application for Hearing with the Division.

2. An Application for Hearing is not deemed filed pursuant to Section 34A-2-413(6)(e)(iii) until the petitioner files with the Division a completed Application for Hearing (Adjudication Form 502) together with all supporting documents and proof of service.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The respondent will also mail to or otherwise serve on the employee a copy of all exhibits the respondent intends to submit at the hearing.

2. Testimony of the witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

Defaults in proceedings under Section 34A-2-413(6)(e)(iii) and as set forth in R612-200-7(D)(4) shall only be ordered at the time of hearing based on nonattendance of a party at the hearing. Motions will only be considered at the time of hearing.

R602-5-4. Hearings in Section 34A-2-413(6)(e)(iii) Cases.**A. Scheduling and Notice.**

A hearing on an Application for Hearing filed pursuant to Section 34A-2-413(6)(e)(iii) and as set forth in R612-200-7(D)(4) will be set within 30 days of the date the Application for Hearing is filed with the Division. The Division will send notice of hearings by regular mail to the addresses of the parties as set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to Section 34A-2-413(6)(e)(iii) and as set forth in R612-200-7(D)(4) shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

R602-5-5. Mediation in Section 34A-2-413(9) Cases.

Prior to filing an application for hearing for dismissal of claim for benefits pursuant to Section 34A-2-413(9) the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-5-6. Pleadings and Discovery in Section 34A-2-413(9) Cases.

A. Definitions.

1. "Application for Hearing" means the Application for Hearing for Termination or Reduction of Compensation form (Adjudication form 602), with all supporting documents and proof of service which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-413(9).

2. "Supporting medical documentation" means any medical report or treatment note completed by a medical provider or physician that references, describes or otherwise sets forth the employee's medical or functional capacities, restrictions and/or abilities.

3. "Support documents" means supporting medical documentation, Persons with Knowledge List (Adjudication Form 403), an outline of the specific instances of non-cooperation as required by R612-200-7(D)(4) and all documents in any way related to reasons identified for the requested termination whether tending to prove or disprove the same and all documents describing the employee's work duties during his or her employment with respondent employer.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the respondent's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "Persons with Knowledge List" (Adjudication Form 403) means a list of any person who may have knowledge of the events and/or circumstances relating to the reasons for the request to terminate or reduce compensation whether tending to prove or disprove the reason(s) set forth in the Application for Hearing. The Persons with Knowledge list must specify the full name, address and phone number of the person if known, a short statement of the knowledge believed possessed by the person and a statement as to whether or not the respondent will actually produce the person with knowledge as a witness at the evidentiary hearing.

6. "Petitioner" means the petitioner in the original case determining permanent total disability.

7. "Respondent" means the respondent(s) in the original case determining permanent total disability.

B. Application for Hearing.

1. Respondent may request a dismissal of claim for permanent total disability compensation pursuant to Section 34A-2-413(9) by filing an Application with the Commission's Adjudication Division.

2. An Application is not deemed filed with the Division until the respondent submits a completed Application with all required documents.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employee will also mail to or otherwise serve on the employer a copy of all exhibits the employee intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as

required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

Defaults shall only be issued at the time of hearing based on nonattendance of a party. Motions will only be considered at the time of hearing.

R602-5-7. Hearings in Section 34A-2-413(9) Cases.

A. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearing by regular mail to the addresses of parties as set forth on the Application. A party must immediately notify the Division of any change or correction of the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of Counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

B. Hearings.

Each hearing pursuant to Section 34A-2-413(9) shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

R602-5-8. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-303, and R602-2.1(M).

KEY: workers' compensation, administrative procedures, hearings

December 8, 2008

34A-1-104(1) et seq.

Notice of Continuation November 8, 2008

34A-2-413(6)(e)(iii)

34A-2-413(9)

R612. Labor Commission, Industrial Accidents.**R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.****R612-400-1. Notification of Workers' Compensation Insurance Coverage.**

Any insurance carrier subject to the policy reporting requirements of Section 34A-2-205 may satisfy such reporting requirements by either of the following methods:

1. The insurance carrier may directly file the required information electronically with the Industrial Accidents Division in accordance with the International Association of Industrial Accidents Boards and Commissions (IAIABC) standards and format.

2. Alternatively, the insurance carrier may use an agent to file the required information electronically with the Industrial Accidents Division in accordance with IAIABC standards and format, provided that the agent has been authorized by the Labor Commission as meeting its electronic filing standards.

R612-400-2. Employee Leasing Company Workers' Compensation Policy Endorsements.**2.1. Workers' Compensation Coverage for Client Companies Under an Endorsement Arrangement.**

An insurance company licensed to write workers' compensation coverage in the state of Utah underwriting an employee leasing company as the named insured shall insure all of the primary insured's client companies under an umbrella policy and shall provide a separate endorsement for each client company unless the client company provides workers' compensation coverage under a separate policy.

2.2. Notification of a New Policy and Endorsements.

A. Any insurance carrier underwriting a new policy naming an employee leasing company as the primary insured shall notify the division in writing or by electronic means within ten working days of the new policy including all client companies covered under the policy. The notification shall include all the information as specified in this rule.

B. The insurance carrier shall subsequently notify the division in writing or by electronic means within ten working days of any new client company endorsements covered under a leasing company's umbrella policy after the initial policy is written giving all information as specified in this rule.

2.3. Required Information.

The following information is required on any notice sent to the division on a policy underwritten by the insurance carrier naming an employee leasing company as the primary insured.

A. Name and both mailing and physical address of the employee leasing company.

B. The policy number and effective dates of coverage for the employee leasing company.

C. Each client company's DBA's (doing business as) names(s) and mailing and physical location(s).

D. The Standard Industrial Classification (SIC) for each client company.

E. The effective dates of coverage on the endorsement for each client company.

2.4. Reporting Injuries.

The reporting of injuries as required in Section 34A-2-407 shall be in the name of the client company.

2.5. Cancellations.

Any insurance carrier underwriting an employee leasing company as the primary insured shall:

A. Give the division a 30 day advance notice in writing or by electronic means of a proposed cancellation of an employee leasing company or any client company written as an endorsement under an employee leasing company's policy.

B. Give the division notice in writing or through electronic means within ten working days after cancellation of a policy underwritten naming the employee leasing company as the

primary insured and any cancellation of an endorsement of a client company covered under the primary insured.

C. Failure by an insurance carrier to notify the division of the cancellation of either the primary insured employee leasing company or a client company will result in the continuation of coverage by the insurance carrier until the division receives notification as specified in this rule.

R612-400-3. Workers' Compensation Rules-Self Insurance.**3.1. Application.**

A. An employer seeking authorization to become self-insured under the provision of Section 34A-2-201 of the Utah Workers' Compensation Act must apply to the division through the use of a form entitled "Application for Self Insurance."

B. The division will require annual renewals for continuing self-insurance. Renewal, through the use of a form entitled "Renewal Application for Self-Insurance", will require an update of the initial information. Renewal information must be submitted at least 60 days before the self-insurance anniversary date. Failure to file a renewal application on time may result in an interruption or cancellation of self-insurance privileges.

C. The initial and all renewal applications must be completed and signed by the employer's duly authorized representative.

3.2. Qualifying Requirements.

A. To qualify, an employer must be in business for a period of not less than five years and shall demonstrate sufficient financial strength and liquidity of the business to assure that all obligations will be promptly met. An employer in business less than five years will be considered only if a pre-existing parent corporation (in business more than five years) guarantees the liability. In cases of merger or name identification change, the history of the pre-existing entity will be considered for the five year requirement. Upon applying for self-insurance privileges, the applicant must forward a current, certified financial statement or other proof of financial ability to pay direct compensation and other expenses as provided by Section 34A-2-201. Mergers occurring after an entity is self-insured will require a new application by the merged entity. However, entities whose financial information can be obtained from Dunn and Bradstreet will not be required to file financial statements unless clarification or supplemental statements are deemed appropriate or necessary.

B. Specific or aggregate excess insurance with policy limits and retention amounts acceptable are required as a condition of approval and continuation of self-insurance privileges.

C. Excess Insurance policies shall include a bankruptcy and insolvency endorsement (Form 303) for each self-insured entity. The endorsement adds the Uninsured Employer's Fund to the excess insurance policy and specifies the conditions of the Utah bankruptcy and insolvency endorsement for individual self-insureds.

D. A minimum \$100,000 surety bond.

E. No corporate surety shall be eligible to write self-insurers' surety bonds or excess insurance unless authorized to transact such business in this state.

F. Surety bonds must be issued on a prescribed form entitled "Self-Insurance Aggregate Surety Bond" and shall be exchanged or replaced with another surety bond only if a 60 day notice of termination of liability is given by the bonding company. The replacement bond must be issued on a form as prescribed by the Commission. No replacements will be authorized by the Commission unless the new surety accepts the liability of the previous surety(ies) or a guarantee is filed by both (all) sureties acknowledging their respective liabilities and periods of time covering such liabilities.

G. All subsidiary companies must have the parent

company guarantee liability for payment of benefits (unless such requirement is waived by the division). The form and substance of such guarantees are to be approved by the division.

H. The division may utilize services such as Dunn and Bradstreet credit ratings for the purpose of evaluating a company's financial ability to pay.

I. Entities that fall within the top two composite credit appraisal ratings by Dunn and Bradstreet (or information from an equivalent service) and their top two ratings on estimated financial strength may qualify for self-insurance in Utah with the minimum requirements as set forth in Rule R612-3-4C. Companies with a 5A or 4A estimated financial strength rating and falling within the fair composite credit appraisal of Dunn and Bradstreet may qualify for self-insurance with higher security requirements as determined by the division. The provisions herein are to be construed as optional, with the division having the option.

J. Self-insured entities, or their parent company if such is a guarantor, that fall below either the 5A or 4A estimated financial strength rating or the top three composite credit appraisal ratings of Dunn and Bradstreet will not be allowed to self-insure. A company already self-insured that falls in the aforementioned disqualifying categories will not be allowed to continue self-insurance privileges. However, at the discretion of the division continuation of self-insurance will be considered if the following steps are taken:

1. An independent actuarial study satisfactory to the division and the employer is made of the reserve requirements of the self-insured entity, said study to be at the employer's expense. Selection of the actuary will be mutually agreed upon by the division and the employer. However, should the parties fail to agree, the division will make the final selection.

2. Satisfactory security is obtained for the reserves plus the aggregate excess retention amount.

3. Any company whose self-insurance privileges are revoked under the provisions of these rules will be required to obtain security for their reserve requirements under the foregoing two step process regardless of whether or not self-insurance privileges are continued.

4. Companies whose privileges are to be revoked will be allowed 60 days from notice to comply with steps 1 through 3 above.

5. Quarterly financial reviews will be taken of entities which retain their self-insurance privileges by following 1, 2, and 3 above.

K. Security requirements for all entities requiring security will be determined by a review of past incurred losses and application of exposure, loss, and contingency factors. The minimum acceptable bond amount is \$100,000.

L. Public and eleemosynary entities are classified as special categories requiring separate consideration for self-insurance privileges and security requirements.

3.3. Administration of the Self-Insurance Program.

A. A self-insurer must procure the services of an insurance carrier or adjusting company to administer the self-insurance program with regard to claims, setting up of reserves, and safety programs; or

B. The self-insurer must show proof of sufficient and competent staff to administer the self-insurance program and provide safety engineering. The division reserves the right to train and test adjustors and administrators of self-insurance programs.

C. Whether a self-insurer hires their own adjustor or contracts with an insurance carrier or service organization, the following conditions must be met:

1. A knowledgeable contact concerning claims will be located in the state of Utah.

2. The self-insurer will maintain a toll free number or accept during office hours a reasonable number of collect calls

from injured employees if either employees of the company or the division offices are in a different city than that of the adjustor.

D. The self-insurer will comply with all rules of the Commission and with the Workers' Compensation Act.

3.4. Notice of Certification for Self-Insurance or Denial and Renewal.

Upon meeting the requirements set forth in these rules, an employer shall receive a formal certificate approving self-insured status. The privilege may be renewed from year to year with renewal procedure as required by these rules. An employer whose original or renewal application for self-insurance has been denied or revoked, or who takes exception to insurance or reserve requirements, may request a review or reconsideration by the Commission. The request must be made within 20 days of the notice of Commission action issued to the employer. A request for review will not automatically extend the authorization to self-insure. However, the Commission may extend the privilege pending review. Without such an extension, the privilege is revoked on the anniversary date.

3.5. Revocation of Right to Self-Insure.

The right to self-insure may be revoked by the division for failure to comply with the rules contained herein.

R612-400-4. Waivers.

4.1. Authority and Purpose.

This rule is enacted under authority of 34A-1-104 of the Utah Labor Commission Act and Title 34A, Chapter Two, Part One, the Workers' Compensation Coverage Waivers Act ("the Act"). The purpose of this rule is to establish procedures for workers' compensation coverage waivers ("coverage waivers"). The rule also addresses the effect of coverage waivers and the adjudicative procedures to be followed by the Division in granting, denying, or revoking coverage waivers.

4.2. Administration by Industrial Accidents Division.

Except as otherwise provided, the Utah Labor Commission's Division of Industrial Accidents ("Division") shall administer the provisions of the Act and this rule.

4.3. Procedure for Application and Issuance of Certificate.

A. A business entity may apply for a coverage waiver by completing a form provided by the Commission, submitting required supporting documents, and paying a fee of \$50. The Division's determination of whether to grant or deny a request for coverage waiver shall be conducted as informal proceedings under the Utah Administrative Procedures Act.

B. Supporting documents. 34A-2-1004 of the Workers' Compensation Coverage Waivers Act requires a business entity to submit the following documentation to support its request for a coverage waiver:

(1) a copy of two or more of the following:

(a) the business entity's federal or state income tax return that shows business income for the complete taxable year that immediately precedes the day on which the business entity submits the information;

(b) a valid business license;

(c) a license to engage in an occupation or profession, including a license under Title 58, Occupations and Professions; or

(d) documentation of an active liability insurance policy that covers the business entity's activities; or

(2) a copy of one item listed in Subsection (1) and a copy of two or more of the following:

(a) proof of a bank account for the business entity;

(b) proof that for the business entity there is:

(i) a telephone number; and

(ii) a physical location; or

(c) an advertisement of services in a newspaper of general circulation or telephone directory showing the business entity's:

(i) name; and

(ii) contact information.

C. Fee. A business entity applying for a workers' compensation coverage waiver certificate shall submit payment of a fee of \$50.00. Such fees are used to defray the costs of processing and evaluating the application and are nonrefundable. If payment of the fee is made by check, the Division may delay issuance of a coverage waiver until it has verified that the check will be honored.

D. Issuance or Denial of Certificate. If the Division determines that a business entity has satisfied each requirement for a coverage waiver, the Division will issue the coverage waiver. If the Division determines that a business entity has not satisfied each requirement for a workers' compensation insurance waiver, the Division will issue a written denial to the business entity, stating the basis for denial and setting forth the business entity's appeal rights.

4.4. Duration, Renewal and Revocation.

A. Duration. Subject to revocation of a coverage waiver as provided by subparagraph C. of this section, a coverage waiver remains in effect for the following time periods:

1. A coverage waiver issued by a licensed workers' compensation insurance company prior to July 1, 2011, the effective date of the Workers' Compensation Coverage Waivers Act, shall remain effective for the period shown on the coverage waiver.

2. A coverage waiver issued by the Division after July 1, 2011, shall be effective for one year from the date the coverage waiver is issued.

B. Renewal. The Division will renew a business entity's coverage waiver if:

1. The business entity requests renewal; and

2. The business entity satisfies all requirements in effect at the time of the renewal request.

C. Revocation. If the Division has reason to believe that a business entity no longer qualifies for a coverage waiver, the Division shall institute proceedings to determine whether the business entity's coverage waiver should be revoked. Such proceedings shall be conducted as informal proceedings under the Utah Administrative Procedures Act. If the Division concludes that the business entity does not satisfy each requirement for a workers' compensation insurance waiver, the Division will issue a written order revoking the waiver certificate, stating the basis for revocation, and setting forth the business entity's appeal rights. The Division may also initiate other proceedings authorized by the Utah Workers' Compensation Act to compel the business entity to obtain workers' compensation coverage for its employees.

4.5. Review of Division Decisions to Deny or Revoke Waiver Certificate.

A business entity may challenge a Division decision to deny or revoke the business entity's coverage waiver by filing an appeal of the decision with the Commission's Adjudication Division. Such appeal proceedings shall be assigned to an administrative law judge and conducted as de novo formal adjudicatory proceedings pursuant to the Utah Administrative Procedures Act.

4.6. Effect, Verification and Limitation of Coverage Waiver.

A. Effect of coverage waiver. 34A-2-103 (7) (c) permits an employer contracting with a business entity to rely upon a valid coverage waiver issued by the Division as proof that the business entity is not required to have a workers' compensation insurance policy.

B. Verification of coverage waiver. An employer seeking to rely upon a business entity's coverage waiver shall retain the following documents:

1. A photocopy of the coverage waiver issued to the business entity by the Division; and

2. A printout of the Division's web page showing that the

business entity's coverage waiver had not been revoked as of the date on which the employer contracted with the business entity.

C. Limitations to effect of coverage waiver. A coverage waiver does not excuse a business entity from obtaining and maintaining workers' compensation insurance coverage for employees who are entitled to such coverage under the Utah Workers' Compensation Act. If and when a business entity has such employees, any coverage waiver previously issued to that business entity becomes void and the business entity must immediately obtain workers' compensation coverage.

R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 2014, as established by the Labor Commission, shall be:

1. 0.35% for the Uninsured Employers' Fund;

2. 2.9% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

**KEY: workers' compensation, insurance, rates, waivers
December 23, 2013 59-9-101(2)**

R651. Natural Resources, Parks and Recreation.
R651-634. Nonresident OHV User Permits and Fees.
R651-634-1. User Permits and Fees.

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee.

1. A decal will be issued which proves payment has been made. The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visible location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999), and H.B. 51 (2004 Utah Laws, Chapter 314, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be \$30 per year.

4. Nonresident OHV user permits shall continue in effect for a period of 12 months beginning with the first day of the calendar month of purchase, and shall not expire until the last day of the same month in the following year.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(i), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity; or to Street Legal All-terrain Vehicles as defined in 41-6a-102(61), and registered for highway use in a state that offers reciprocal highway operating privileges to Utah residents operating Street Legal All-Terrain vehicles.

Provisions of this rule shall not apply to off-highway vehicles owned by an off-highway vehicle manufacturer and being operated exclusively for the purpose of an off-highway vehicle manufacturer sponsored event; provided that the operator of the vehicle has in his or her possession a letter or certificate issued by the manufacturer which contains the following information:

(1) The name, address and contact information of the off-highway vehicle manufacturer; and

(2) A physical description of the vehicle, including the vehicle identification number or another number assigned by the manufacturer for identification purposes; and

(3) A brief description of the manufacturer sponsored event, including the dates thereof; and

(4) The name of the authorized operator(s) and

(5) An authorized signature of a manufacturer's representative.

KEY: parks
December 26, 2013
Notice of Continuation June 29, 2010

41-22-35
79-4-304

R686. Professional Practices Advisory Commission, Administration.**R686-100. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.****R686-100-1. Definitions.**

A. "Action" as used in 53A-6-306 and as applied in this rule means a disciplinary action taken by UPPAC or the Board adversely affecting an educator's license, and which, pursuant to 53A-6-306, may not be taken without giving the educator an opportunity for a fair hearing to contest the allegations upon which the action would be based. Actions include:

- (1) probation
- (2) suspension
- (3) revocation.

B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

C. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

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

E. "Chair" means the Chair of UPPAC.

F. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

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

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

- (1) personal contact information;
- (2) education background;
- (3) professional endorsements;
- (4) employment history; and
- (5) a record of disciplinary action taken against the educator's license.

I. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

J. "Disciplinary letter" means a letter issued to respondent by UPPAC as a result of an investigation into allegations of educator misconduct. Disciplinary letters include:

- (1) letters of admonishment;
- (2) letters of warning;
- (3) letters of reprimand; and
- (4) any other action that UPPAC or the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in 686-100-1A.

K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

L. "Educator Misconduct" means unprofessional or criminal conduct; conduct that renders the educator unfit for duty; or conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided

in R277-515.

M. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.

N. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.

O. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.

P. "Final action" means any action by UPPAC or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

Q. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.

R. "Informant" means a person who submits information to UPPAC concerning alleged misconduct of an educator.

S. "Investigator" means an employee of the USOE who is assigned by UPPAC to investigate allegations of educator misconduct and to offer recommendations of educator discipline to UPPAC at the conclusion of the investigation. The investigator works independently of the Executive Secretary and provides an investigative report for UPPAC. The investigator may also be the prosecutor but does not have to be. The investigator may be called on by the prosecutor, if not the same person, to testify at a hearing about the investigator's findings during the course of an investigation.

T. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by a UPPAC investigator. The report includes a brief summary of the allegations, a recommendation for UPPAC, and a summary of witness interviews conducted during the course of the investigation. The investigative report may include a rationale for the recommendation, and mitigating and aggravating circumstances, but does not have to. The investigative report is maintained in the educator's licensing file.

U. "Jurisdiction" means the legal authority to hear and rule on a complaint.

V. "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.

W. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

X. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

Y. "Notification of Alleged Educator Misconduct" means the official UPPAC form that can be accessed on UPPAC's internet website, and can be submitted by any person, school, or

district that alleges educator misconduct.

Z. "Party" means the complainant or the respondent.

AA. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

BB. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.

CC. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

DD. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

EE. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail, electronic correspondence, or by other means reasonably calculated, under all of the circumstances, to notify the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

FF. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.

GG. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

HH. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

II. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and UPPAC has directed that an investigation of the educator's alleged actions take place.

JJ. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;

(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of

reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

LL. "USOE administrative action" means an administrative investigation into allegations of educator misconduct, opened under the authority of 53A-3-306.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to provide procedures regarding:

- (1) notification of alleged educator misconduct;
- (2) review of notification by UPPAC; and
- (3) complaints, stipulated agreement and defaults.

The provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d). UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63G-4 as necessary to adjudicate an issue.

R686-100-3. Initiating Proceedings Against Educators.

A. The Executive Secretary may initiate proceedings against an educator upon receiving a notification of alleged educator misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) name, position (such as administrator, teacher, parent, student), telephone number, address, and contact information of the informant;

(b) name, position (such as administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) the facts on which the allegations are based and supporting information;

(d) signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1), the informant may be told of final actions taken by UPPAC or the Board regarding the allegations.

(3) Proceedings initiated upon the Executive Secretary's own initiative are based on information received through telephone calls, letters, newspaper articles, media information, notices from other states or other means; UPPAC shall not investigate anonymous allegations.

B. All notifications of alleged educator misconduct shall be directed to UPPAC for initial review.

C. All written allegations, subsequent dismissals, or action or disciplinary letter of a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

R686-100-4. Review of Notification of Alleged Educator Misconduct.

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary or the Executive Committee or both shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that UPPAC lacks jurisdiction or that the request for agency action does not state a cause of action that UPPAC should address, UPPAC shall dismiss the request.

(2) Initiate an investigation: If UPPAC determines that UPPAC has jurisdiction and that the notification states a cause of action which may be appropriately addressed by UPPAC or the Board, the Executive Secretary shall direct a UPPAC

investigator to gather evidence relating to the allegations.

(a) Prior to a UPPAC investigator's initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated, to the LEA of current employment, and to the LEA where the alleged activity occurred, with information that an investigation has been initiated. The letter shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct. UPPAC may also notify an LEA that formerly employed the educator or the LEA that currently employs the educator or both, as appropriate.

(b) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(c) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(d) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, it may be included in the investigative report.

(e) The report shall be submitted to the Executive Secretary, who shall review the report with UPPAC.

(f) The investigative report shall become part of the permanent case file.

B. Secondary Review: UPPAC shall review the investigative report and, based on the recommendation by the investigator, shall direct one of the following:

(1) Dismiss: If UPPAC determines no further action should be taken, it shall dismiss the case as provided in Section R686-100-4A(1), above; or

(2) Prepare and serve complaint: If the investigator determines that allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, shall direct the prosecutor to prepare and serve a complaint and a copy of these rules upon the respondent pursuant to R686-100-5; or

(3) Approve a Stipulated Agreement: At any time after UPPAC has directed that a case be investigated, an educator may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

(a) The stipulated agreement shall conform to the requirements set forth in R686-100-6.

(b) Pursuant to 686-100-6B, an educator may stipulate to any recommended disposition for an action as defined in R686-100-1A.

(4) Upon receipt of an investigative report, including a stipulated agreement, or a hearing report as defined in R686-101, UPPAC may direct the Executive Secretary to carry out the recommendation or recommend suspension or revocation to the Board for consideration.

(5) If so directed by UPPAC, documentation of the disciplinary letter or action shall be sent to the respondent's employing LEA or to an LEA where the respondent finds employment.

(6) UPPAC may direct an additional investigation or other action as appropriate.

R686-100-5. Complaints.

A. Filing a complaint: If UPPAC determines that the allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated, along with a copy of these rules.

B. Elements of a complaint: At a minimum, the complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable respondent to understand and address the allegations;

(4) a statement of the potential consequences should the allegations be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint, request a hearing, or discuss a stipulated agreement, within 30 days of the date the complaint was mailed to the respondent, by filing a written answer addressed to the Executive Secretary, at the mailing address for the Office. The statement shall advise the respondent that if he fails to respond in 30 days, a default judgment for a suspension term of not less than five years shall be entered;

(6) a statement that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing. On his own motion, the Executive Secretary, or designee with notice to the parties, may reschedule a hearing date.

C. Answer to the complaint: An answer to the complaint shall be made by filing a written response signed by the respondent or his representative with the Executive Secretary within 30 days after the complaint was mailed. The answer shall include a request for a hearing or a stipulated agreement, and shall include:

(1) the file number of the complaint;

(2) the names of the parties;

(3) a statement of the relief that the respondent seeks, which may include a request for a hearing or a stipulated agreement; and

(4) if not requesting a hearing or a stipulated agreement, a statement of the reasons that the relief requested should be granted.

D. Response to answer. As soon as reasonably practicable after receiving the answer, or no more than 30 days after receipt of the answer at the USOE, the Executive Secretary shall do one of the following:

(1) Dismiss the complaint: If the Executive Secretary and the Executive Committee determines upon review of respondent's answer that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to UPPAC that the complaint be dismissed. If UPPAC votes to uphold the dismissal, the informant and the respondent shall each be served with notice of the dismissal. If UPPAC does not uphold the dismissal, the complaint shall proceed in accordance with the rules set forth in R686-100.

(2) Schedule a hearing: If the respondent requests a hearing, UPPAC shall direct the Executive Secretary to schedule a hearing as provided in R686-101.

(3) Direct investigator to negotiate a stipulated agreement: If the respondent requests a stipulated agreement, the Executive Secretary shall direct the investigator to negotiate a stipulated agreement with respondent.

E. Default: If respondent does not respond to the complaint within 30 days, the Executive Secretary may issue a default in accordance with the procedures set forth in R686-100-7.

(1) Except as provided in R686-100-5E(2), a default judgment shall result in a recommendation to the Board for a suspension of five years before the educator may request a reinstatement hearing; a default may include conditions that an educator shall satisfy to have any possibility for a reinstatement hearing.

(2) A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(2).

R686-100-6. Stipulated Agreements.

A. Pursuant to R686-100-4B(3), at any time after UPPAC has directed that a case be investigated, a respondent may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

B. By entering into a stipulated agreement, a respondent waives his right to a hearing to contest the recommended disposition. A respondent has a right to a hearing for any action as defined in R686-100-1A that adversely affects the respondent's license, including:

- (1) revocations;
- (2) suspensions; and
- (3) probations.

C. A respondent may request a hearing to contest a recommended disposition for a letter of reprimand or deny respondent a hearing, but UPPAC has discretion to grant a hearing or deny respondent a hearing because letters of reprimand do not adversely affect an educator's license.

D. A respondent shall not have a right to a hearing for recommended dispositions that are lesser disciplinary actions, such as letters of warning and letters of admonishment.

E. Elements of a stipulated agreement: At minimum, a stipulated agreement shall include:

(1) a summary of the facts, the allegations, the evidence relied upon by UPPAC in its recommendation, and a summary of the respondent's response, if any;

(2) a statement that the respondent accepts the facts recited in the stipulated agreement as true for purposes of the USOE administrative action;

(3) a statement that the respondent waives his right to a hearing to contest the allegations that gave rise to the investigation, and agrees to limitations on his license or surrenders his license rather than contest the allegations;

(4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(5) if for suspension, a statement that the respondent:

(a) shall not seek or provide professional services in a public school in Utah; or

(b) otherwise seek to obtain or use a license in Utah; or

(c) work or volunteer in a public K-12 setting in any capacity without express authorization from UPPAC Executive Secretary, unless or until the respondent:

(i) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(ii) satisfies other provisions provided in the stipulated agreement.

(6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(7) a statement that respondent waives any right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(8) a statement that all records related to the stipulated agreement shall remain permanently in the educator's licensing file at the USOE.

F. Violations of the terms of a valid stipulated agreement may result in an additional disciplinary action.

G. The stipulated agreement shall be forwarded to UPPAC for consideration.

(1) If UPPAC rejects the stipulated agreement, the respondent shall be informed of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if

the agreement had not been submitted.

(2) If UPPAC accepts a stipulated agreement for probation or a letter of reprimand, this is a final USOE administrative action, and UPPAC Executive Secretary shall notify the parties of the decision and shall direct the letter of reprimand to be sent or probation to begin.

(3) If UPPAC accepts a stipulated agreement for suspension or revocation of an educator's license, the agreement shall be forwarded to the Board for consideration.

(4) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.

E. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered agreement within 30 days after the agreement is mailed, UPPAC or the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R686-100-7.

F. The terms and conditions of a stipulated agreement are protected under Section 63G-2-304(9) and (24), unless waived by the educator. The disposition (such as suspension for a minimum of two years, revocation, probation) of the stipulated agreement is public information, upon request consistent with Section 63G-2-204.

R686-100-7. Default Procedures.

A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement was served, the Executive Secretary may issue an order of default against respondent consistent with the following:

(1) The prosecutor shall prepare and serve on respondent an order of default including a statement of the grounds for default, and a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement.

(2) Ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically. UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact.

(2) Respondent has 20 days following service of the order of default to respond to UPPAC. If UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.

C. Except as provided in R686-100-7D, a default judgment shall result in a recommendation to the Board for a suspension of no less than five years.

D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).

KEY: teacher licensing, conduct, hearings**November 7, 2013****53A-6-306(1)(a)****Notice of Continuation February 1, 2013**

R746. Public Service Commission, Administration.**R746-365. Intercarrier Service Quality.****R746-365-1. General Provisions.**

A. Application and Authority -- This rule shall apply to telecommunications corporations that are obligated to interconnect facilities and equipment for the mutual exchange of telecommunications traffic pursuant to 54-8b-2.2.

1. This rule provides service guidelines to ensure that telecommunications corporations, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes that will:

a. prevent impairment of public telecommunication services attributable to the provisioning of essential facilities and services used to provide local exchange service, including unreasonable blocking of telecommunications traffic carried by or exchanged between the networks of multiple telecommunications corporations;

b. ensure that each incumbent local exchange carrier timely provides essential interconnection facilities and services to other telecommunications corporations that is at least equal in quality to that provided by the incumbent local exchange carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier with whom the incumbent local exchange carrier interconnects, or provides interconnection facilities and services or that otherwise is adequate, efficient, just and reasonable.

2. This rule defines guidelines relating to interconnection and the exchange of traffic that apply to all telecommunications carriers and further defines additional guidelines relating to interconnection and the exchange of traffic that apply only to incumbent local exchange carriers, as required by the federal Telecommunications Act of 1996, 47 U.S.C. Section 251.

3. This rule specifies network performance and service quality guidelines applicable to telecommunications corporations interconnecting pursuant to 54-8b-2.2 and upon which the Commission may rely in determining whether service is just, adequate, and reasonable.

4. This rule establishes specific network monitoring and reporting obligations for incumbent local exchange carriers.

5. Incumbent local exchange carriers with less than 50,000 access lines shall be exempt from this rule. If a carrier receives a bona fide request for interconnection made pursuant to the notice and exemption provisions of 47 U.S.C. Section 251 (f), in the event the Commission determines that the requirements of Section 251(f)(1)(B) are met and the Commission terminates the exemption, the Commission may also consider what service standards shall apply to the incumbent local exchange carrier and may promulgate rules to implement applicable standards.

6. The adoption of this rule by the Commission neither precludes subsequent amendment pursuant to applicable statutory procedures, nor the grant of a temporary exemption by the Commission as provided in R746-100-15, Deviation from Rules.

R746-365-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in 54-8b-2, R746-348, or this rule. As used in this rule, unless context states otherwise, the following definitions shall apply:

1. "Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subsection, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

2. "Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of

another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

3. "Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

4. "Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

5. "CFR" -- means the Code of Federal Regulations.

6. "Commission" -- means the Public Service Commission of Utah.

7. "Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

8. "Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

9. "End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

10. "FCC" -- means the Federal Communications Commission.

11. "Federal Act" -- means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Section 151 et seq.).

12. "Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

13. "Incumbent Local Exchange Carrier" (ILEC) -- is defined as it is in R746-348, Interconnection.

14. "Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

15. "Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

16. "Network Element" or "Network Facility" -- is defined as it is in R746-348-2, Interconnection.

17. "Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

18. "OSS Interface" -- means a system of communications links, computer hardware and software and associated equipment providing access into an ILEC's operational support systems for human-to-computer or computer-to-computer communication. This definition is conjunctive to the definition of "operational support" contained in R746-348-2, Interconnection.

19. "Service Order" -- means a written or electronic request for essential facilities or services made to effectuate 54-8b-2.2 and section 251 of the federal act.

20. "Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications corporations to monitor repair and

maintenance actions required for disposition of out-of-service or substandard service conditions.

21. "Wholesale Services" -- means essential services available to telecommunications corporations for the purpose of resale to end users.

22. "Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

R746-365-3. Network Guidelines Applicable to All Telecommunications Corporations.

A. Engineering -- All telecommunications corporations shall construct network facilities in conformance with network design standards and specifications.

B. Stricter Standards -- If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the agreements may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

R746-365-4. Service Quality Guidelines.

A. Service Quality Applicable to All Telecommunications Corporations --

1. Carrier Provisioning Intervals -- Each telecommunications corporation shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from a telecommunications corporation's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through, as further enumerated in R746-365-5. A telecommunications corporation shall return a FOC within two business days of receipt of a service order from another telecommunications corporation.

a. Interoffice Trunking Facilities -- Pursuant to forecasting requirements established in R746-365-6, forecasted trunk, routing and switching facilities shall be provisioned to any requesting local exchange carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

(i) Service Orders Presented Under Approved Forecasts -- A telecommunications corporation shall complete all service orders for essential facilities and services requested by another telecommunications corporation that comport with four-month projections contained in a joint forecast developed pursuant to R746-365-6(C).

b. Number Portability -- Telecommunications corporations shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

2. Trouble Reports --

a. Receipt, Investigation and Recording -- Each telecommunications corporation shall provide for the receipt of trouble reports 24 hours a day, seven days a week. Each telecommunications corporation providing public telecommunications service shall investigate and respond to each trouble report. Each telecommunications corporation shall

maintain a record of trouble reports made by end users and other telecommunications corporations which complies with R746-365-5(B)(4).

b. Emergency Out-of-Service -- Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of a telecommunication corporations personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

c. Notice of Unusual Repairs and Planned Interruptions -- If unusual repairs preclude prompt disposition of a reported trouble, telecommunications corporations shall notify all affected telecommunications corporations. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications corporations shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

d. Repair Intervals -- Each telecommunications corporation shall seek to clear out-of-service trouble reports received from another telecommunications corporation within the following intervals, unless other repair intervals have been agreed to:

TABLE

DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and	
Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications corporations is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure recorded in accordance with R365-5(B)(4).

3. Network Performance Levels -- Each telecommunications corporation shall engineer, furnish and install essential facilities and services designed to meet busy hour demand, and to prevent unreasonable blocking. The following minimum network performance standards apply to:

a. Interoffice Facilities --

(i) Local and extended area service interoffice trunk facilities shall have a minimum engineering design standard of (P.01) grade of service.

(ii) Intertandem facilities shall have a minimum engineering design standard of B.0025 (P.0025) grade of service.

b. Outside Plant -- Each telecommunications corporation shall engineer, construct and maintain cable and wire between an end user network interface device and the serving wire center in conformance with current industry standards, as described in R746-365-3(B), and common engineering practices.

B. Service Quality and Other Network Guidelines Applicable to ILECs --

1. Operational Support Systems --

a. OSS Interfaces -- Each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

b. Testing of OSS Interfaces -- Each telecommunications corporation shall upon request jointly conduct with one or more telecommunications corporations testing of OSS interfaces used to obtain access to operational support systems. OSS Interface testing shall commence not more than 45 days after a request for testing is received by a telecommunications corporation. The telecommunications corporations shall determine the duration

of tests which shall be conducted among noncommercial end user accounts. No unreasonable limitation shall be imposed by an ILEC on another telecommunications corporation's ability to test intercarrier OSS Interfaces to ensure compatibility between ILEC and the other telecommunications corporation's operational support systems.

2. Network Provisioning Intervals -- Each ILEC shall provide essential facilities and services that comply with the following installation intervals:

a. Network Elements -- Each ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services as described in R746-365-5-(C)(3)(c).

(i) Unbundled Loops -- Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications corporations within the specified intervals.

TABLE

Facility Type	Quantity	Interval
DS0 or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DS0 or voice grade equivalent, no dispatch:	1 - 24	3 days
	24 - n	7-10 days
DS1 -- Facilities provisioned and available:		5 days
ISDN -- Facilities provisioned and available:		7 days
XDSL -- Facilities provisioned and available:		7 days
DS3 -- Facilities provisioned and available:		7 days
OC3 -- Facilities provisioned and available:		15 days
OC4 - Higher -- Facilities provisioned and available:		15 days or negotiated due date.

b. Wholesale Services -- Installation intervals for wholesale services shall vary depending upon whether an existing end user service provided by an ILEC is transferred to another telecommunications corporation, or, is a new service installation.

(i) An ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the telecommunications corporation.

(ii) An ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the telecommunications corporation.

(iii) An ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the telecommunications corporation.

c. Collocation -- The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

(i) Upon receipt by an ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the telecommunications corporation disputes an ILEC's denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the telecommunications corporation may petition the Commission pursuant to Section 54-8b-17 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

(ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a

written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

(iii) The telecommunications corporation shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

(iv) If the telecommunication corporation accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the telecommunication corporation's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the CLEC's collocated interconnection facilities. The ILEC shall grant the telecommunications corporation access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the telecommunication corporation's collocation equipment complete provisioning of all network facilities ordered by the telecommunications corporation.

(v) If the telecommunication corporation provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation. If the telecommunication corporation accepts the ILEC's amended quotation, construction of the collocation space shall proceed as described in R746-365-4(B)(3)(c)(iv); or, 3) reject the proposal. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the telecommunications corporation may petition the Commission for an expedited hearing and resolution of the dispute pursuant to R746-365-8(B).

R746-365-5. Monitoring and Reporting Requirements.

A. Availability and Retention of Records --

1. Availability of Records -- Each telecommunications corporation shall make network engineering and administrative records available for inspection by the Commission or its designee during normal operating hours.

2. Retention of Records -- All information required by this rule shall be preserved for at least 36 months after the date of entry.

3. Information Maintained -- Each telecommunications corporation shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other telecommunications corporations.

4. Rights of Division of Public Utilities -- Upon request made by the Division of Public Utilities, a telecommunications corporation shall provide within seven business days copies of any information requested. The Division of Public Utilities may request frequent monitoring of network performance, provisioning intervals and general service quality if evidence exists that public telecommunications services are impaired.

5. Special Study -- When requested by the Division of Public Utilities (the Division), an ILEC may file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair

intervals for services provided to a telecommunications corporation, to an affiliate, or, aggregated for its ten largest customers. The Division shall investigate the source of the ILEC's operational support evidence and, at its discretion, petition the Commission pursuant to R746-100-15, Deviation from Rules. If the Commission grants consideration of a petition, intervenors may audit the ILEC's operational support evidence underlying the results of its study.

B. Network Monitoring and Performance Reporting Obligations Applicable to All Telecommunications Corporations --

1. Monitoring -- Each telecommunications corporation shall monitor the use of its network so as to:

- a. issue the reports required by this section; and
- b. monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.

2. Call Blocking -- Each telecommunications corporation shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications corporation. Each telecommunications corporation shall notify an interconnecting telecommunications corporation immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels specified in R746-365-4(A)(2).

3. Delayed Service Orders -- Each telecommunications corporation shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications corporation in accordance with the provisioning intervals established in R746-365-4. The record shall provide the following data:

- a. the name and address of the telecommunications corporation;
- b. the circuit or facility type requested in the service order;
- c. the date and hour the service order was received;
- d. the reason for the delay;
- e. the number of days the order has been delayed;
- f. the expected order completion date for each service order;
- g. whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;
- h. a copy of the FOC provided the requesting telecommunications corporations.

4. Carrier Trouble Reports -- Each telecommunications corporations shall maintain a record, by wire center, of trouble reports received from another telecommunications corporations. The record shall:

- a. identify the telecommunications corporation experiencing trouble;
- b. the affected services;
- c. the time, date and nature of the report;
- d. the cause and action taken to clear the trouble and its recorded disposition;
- e. the date and time of trouble clearance.

C. Performance Monitoring and Reporting Obligations Applicable to ILECs --

1. Service Provisioning Reports -- Each ILEC will provide interconnecting telecommunications corporations performance monitoring reports detailing the ILEC's provisioning of:

- a. services to the ILEC's retail customers in the aggregate;
- b. essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;
- c. essential facilities and services provided in the aggregate to other telecommunications corporations purchasing interconnection; and

d. essential facilities and services provided to individual telecommunications corporations purchasing interconnection.

2. Service Response Description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from:

- a. its retail customers;
- b. its affiliated customers purchasing essential facilities and services for interconnection or local exchange access;
- c. interconnecting telecommunications corporations; and
- d. The service response description will be made available upon request to telecommunications corporations purchasing essential facilities and services for interconnection. The ILEC shall comply with the procedures outlined in its service response description.

3. Performance Monitoring Reports -- Performance monitoring reports shall include the following reports in addition to any additional reports the Commission may request:

a. Pre-Ordering Data -- Pre-ordering data means network administration data that resides in an ILEC's operational support systems that includes, but is not limited to: facility availability, service availability, customer service records, appointment scheduling, telephone number reservation, feature function availability, and street address validation.

(i) Average OSS Response Interval for Pre-Ordering Data -- This report measures average response time per transaction for: customer service records; due date availability, address validation, feature function availability and telephone number selection and reservation. It shall be measured as: the Average Response Interval. The Average Response Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences between minuends expressed in Query Response date and time and subtrahends expressed in Query Submission date and time, the sum total dividend being divided by a divisor expressed as the number of Queries submitted in the reporting period.

(ii) OSS Interface Availability -- This report measures the percentage of time an OSS Interface is actually available for use compared to scheduled availability. It shall be measured as: the Percent System Availability. The Percent System Availability will equal the quotient of the following formula: the dividend expressed in the hours the OSS Interface functionality is actually available to CLECs during the report period divided by a divisor expressed in the number of hours the functionality was scheduled to be available during the reporting period, the quotient being expressed as a percentage.

b. Ordering --

(i) Firm Order Confirmation Timeline -- This report measures the average interval from receipt of a service order to distribution of an order confirmation notice. It shall be measured as: measured as the Mean FOC Interval. The Mean FOC Interval will equal the quotient of the following formula: the dividend expressed as the sum total of the differences of minuends expressed as the date and time of Firm Order Confirmation (FOCs) and subtrahends expressed as the date and time of Order acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders confirmed in the reporting period.

(ii) Reject Timelines -- This report measures average response time from receipt of service order to distribution of rejection notice. It shall be measured as: the Mean Reject Interval. The Mean Reject Interval will equal the quotient of the following formula: a dividend expressed as the total sum of the difference of minuends expressed as the date and time of Order Rejection and subtrahends expressed as the date and time of Order Acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders Rejected in the reporting period.

(iii) Percentage Rejects -- This report measures the percentage of total service orders received and rejected by the

ILEC due to errors or omissions in the service order.

(iv) Timeliness of Order Completion Notification -- This report measures average response time from the actual completion date to distribution of service order completion notification. It shall be measured as: the Completion Interval. The Completion Interval shall equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Notice of Completion issued to the telecommunications corporations and subtrahends expressed as the date and time of Work Completion by the ILEC, the sum total dividend being divided by a divisor expressed as the number of Orders completed during the reporting period.

(v) Delayed Order Interval -- This report measures uncompleted orders where the committed due date on a firm confirmation order has passed. It shall be measured as: the Mean Delayed Order Interval. The Mean Delayed Order Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the reporting period close date and subtrahends expressed as the Committed Order Due date, the sum total dividend being divided by a divisor expressed as the number of Orders Pending and Past the Committed Due Date.

c. Provisioning --

(i) Average Completion Interval -- This report measures the average time from an ILECs receipt of service order to the completion date provided on an OCN. It shall be measured as: the Average Completion Interval. The Average Completion Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the OCN date and time and subtrahends expressed as the Service Orders Submission date and time, the sum total dividend being divided by a divisor expressed as the count of Orders completed in the reporting period.

(ii) Percentage of Orders Completed On Time -- This report measures the percentage of total orders completed on or before the completion date provided on an OCN. It shall be measured as: the Percent Orders Completed on Time. The Percent Orders Completed on Time will equal the quotient of the following formula: a dividend expressed as the count of Orders Completed within ILEC Committed Due Date and a divisor expressed as the count of Orders Completed in the reporting period, the quotient being expressed as a percentage.

(iii) Percentage Missed Installation Appointments -- This report measures the percentage of service orders where installation of service is not performed at a time in which the customer concurs. It excludes misses when the other telecommunications corporation or end user causes the missed appointment. It shall be measured as: the Percentage Missed Installation Appointments. The Percentage Missed Installation Appointments will equal the quotient of the following formula: a dividend expressed as the count of appointments missed and a divisor expressed as the count of Wholesale Orders completed in the reporting period, the quotient being expressed as a percentage.

(iv) New Service Installation Trouble Within 30 Days -- This report measures the percentage of new service installations which prove defective within 30 days following completion of a service order. It shall be measured as: the Percentage New Service Installation Trouble within 30 days. The Percentage New Service Installation Trouble within 30 days will equal the quotient of the following formula: a dividend expressed as the count of defective New Service Install in the past 30 days divided by a divisor expressed as the count of total New Service Installs in the past 30 days; the quotient being expressed as a percentage.

d. Maintenance --

(i) Trouble Report Rate -- This report measures the frequency of direct or referred trouble report incidents across a

universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. It shall be measured as: the Trouble Report Rate. The Trouble Report Rate will equal the quotient of the following formula: a dividend expressed as the count of Initial and Repeated Trouble Reports in the reporting period divided by a dividend expressed as the number of Service Access Lines in service at the end of the reporting period; the quotient being expressed as a percentage. For purposes of R746-365-5C(1)(c) and (d), an ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications corporation's end-user customers who are not served by the ILEC.

(ii) Missed Repair Appointments -- This report measures the percentage of trouble reports not cleared by the committed date and time. It excludes misses where the telecommunications corporation or end user caused the missed appointment. It shall be measured as: the Percentage Missed Repair Appointments. The Percentage Missed Repair Appointments will equal the quotient of the following formula: a dividend expressed as the count of Repair Appointments Missed divided by a divisor expressed as the count of Total Appointments; the quotient being expressed as a percentage.

(iii) Mean Time to Restore -- This report measures the restoral interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared. It shall be measured as: the Mean Time to Restore. The Mean Time to Restore will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Ticket Closure and subtrahends expressed as the date and time of Ticket creation, the sum total dividend being divided by a divisor expressed as the count of Trouble Tickets Closed in the reporting period.

(iv) Percentage Repeat Trouble Reports Within 30 Days -- This report measures the percentage of trouble reports on a line or circuit that has had a previous trouble report in the preceding 30 days. It shall be measured as: the Repeat Trouble Rate. The Repeat Trouble Rate will equal the quotient of the following formula: a dividend expressed as the count of Service Access Lines generating more than one Trouble Report within a continuous 30 day period divided by a divisor expressed as the number of Trouble Reports in the report period; the quotient being expressed as a percentage.

e. Billing --

(i) Timeliness of Daily Usage Feed -- This report measures the interval in hours between the recording of usage data and the transmission in proper format to a telecommunications corporation. It shall include usage originating at ILEC switches, resale and UNE switching, and not alternately billed messages received from other ILECs. It shall be measured as: the Mean Time to Provide Recorded Usage Records. The Mean Time to Provide Recorded Usage Records will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the data set transmission time and subtrahends expressed as the time of message recording the sum total dividend being divided by a divisor expressed as the count of all messages transmitted in the reporting period; the quotient being expressed as a percentage.

f. Specific Performance Monitoring Reports -- The Commission, the Division of Public Utilities or a telecommunications corporation may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring reports.

4. Identifiable Carrier-Specific Information -- An ILEC shall ensure that any carrier specific information contained in the performance monitoring reports is disclosed only to the individual carrier. The ILEC shall not use any information

specific to a carrier for any purpose other than the reporting requirements contained herein.

R746-365-6. Joint Planning and Forecasting.

A. Planning -- A telecommunications corporation will meet with another telecommunications corporation, interconnecting or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications corporations. At a minimum, the telecommunications corporations will meet once every calendar quarter.

B. Forecasting --

1. Forecasting is the joint responsibility of the telecommunications corporations. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications corporations is required on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals:

- a. four months;
- b. one year; and
- c. three years.

To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

2. The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.

3. The use of Common Language Location Identifier (CLLI-MSG) shall be incorporated into the forecasts.

4. The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

5. The forecasts, in narrative form, shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of the standards set forth in R746-365-5(B)(2).

6. The forecasts shall include the requirements of the telecommunications corporations for each of the following trunk groups:

- a. intraLATA toll and switched access trunks;
 - b. EAS and local trunks;
 - c. directory assistance trunks;
 - d. 911 and E911 trunks;
 - e. operator service trunks;
 - f. commercial mobile radio service and wireless traffic;
- and
- g. meet point billing trunks.

7. Unless otherwise agreed, forecasting information exchanged between interconnecting local exchange carriers, or disclosed by one interconnecting local exchange carrier to the other, shall be deemed confidential and proprietary.

C. Procedure for Forecasting --

1. At least 14 days before a scheduled joint planning and forecasting meeting, the telecommunications corporations shall exchange information necessary to prepare the forecast described in R746-365-6(B). At a minimum, the telecommunications corporation will provide the other with the following information.

a. Existing Interconnection Locations -- For existing interconnection locations between the telecommunications corporations, each telecommunications corporation shall provide:

(i) blocking reports, at the individual trunk group level, detailing blocking at each end office, including overflow volumes, and blocking between the telecommunications corporation's end offices and tandem switches;

(ii) the existence of any network switching, capacity or other constraints.

(iii) any network reconfiguration plans for the telecommunications corporation's network.

b. New Markets -- They may request the following information concerning a specific market area in the other's Utah service territory into which they desire to expand their own network:

(i) The network design and office types in the market area.

(ii) The capabilities of the network in the market area.

(iii) Any plans to reconfigure the network in the market area.

c. Future need information -- The telecommunications corporation will provide the other with the following information:

(i) The number of trunk lines requested and the projected century call second loads used to formulate such request.

(ii) Whether internet providers will be served and the projected number of internet provider lines needed.

(iii) The projected busy hour(s) of the trunk groups.

(iv) The expected century call seconds on busy hours - how many century call seconds the last idle trunk line will carry.

(v) The projected service dates for the requested trunking groups for the first quarter forecasted.

(vi) The telecommunications corporation's forecast for direct trunk groups to any particular end office.

(viii) Any ramp up time anticipated for the use of the requested trunk lines, and an estimate of when the trunk group will reach capacity limits.

(x) Whether the telecommunications corporation requests usage and overflow data on the trunk groups which are directly connected to the other's end offices.

2. The telecommunications corporation shall prepare a joint forecast consistent with the requirements of R746-365-6(B) and shall submit the forecast to the other at least seven days before the scheduled joint planning meeting.

3. Prior to the scheduled joint planning meeting, the telecommunications corporation shall notify the other whether it accepts the four-month forecast, rejects the four-month forecast, or proposes specific modifications to the four-month forecast.

a. If the telecommunications corporation rejects the four-month forecast or proposes modifications to the forecast, the telecommunications corporation shall submit a written statement to the other outlining the reasons why the forecast, as prepared by the other, is unacceptable. The statement shall be supported by written documentation to support the telecommunications corporation's position.

b. At the joint planning meeting, the telecommunications corporations may agree on the terms of the four-month forecast, as initially presented, or with modifications agreed to by them. If no agreement is reached, the telecommunications corporations shall jointly outline all areas of disagreement.

4. If the telecommunications corporations cannot agree on the terms of the quarterly four-month forecast, either local exchange carrier may commence an expedited dispute resolution proceeding before the Commission, as provided in Section 54-8b-17. In that proceeding, the burden of persuasion shall be on an ILEC to demonstrate that a four-month quarterly forecast submitted by a CLEC is unreasonable.

5. To the extent the telecommunications corporations agree to the terms of a forecast, the terms shall be deemed approved for purposes of this section, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

6. If the telecommunications corporations agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, a telecommunications corporation shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast. Compliance with the terms of the forecast shall be based on the network provisioning interval standards set forth in R746-365-4(B)(2) as applicable.

D. Capacity Beyond the Four-month Forecast -- If a telecommunications corporation desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, the telecommunications corporation may order the additional quantity if it pays a capacity reservation charge to the other telecommunications corporation from whom it orders.

E. Trunk Group Underutilization -- If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either telecommunications corporation may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases the network performance levels and the network provisioning intervals as set forth in R746-365-4(A)(2) and R746-365-4(B)(3) shall be maintained. If the telecommunications corporations cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding as provided in Section 54-8b-17.

F. Point of Contact -- Telecommunications corporations shall provide a specified point of contact for planning, forecasting and trunk servicing purposes. The specified point of contact shall have all authority necessary to fulfill the responsibilities as set forth in this section.

R746-365-7. Remedies.

A. Commission Assessed Penalties -- The Commission may assess penalties, as provided in 54-7-25 and 54-8b-17, against any telecommunications corporation that unreasonably fails or refuses to comply with this rule, including, without limitation, the provisioning and forecasting provisions contained in this rule.

B. Carrier Charges and Offsets --

1. Failure to Comply with This Rule -- If a telecommunications corporation fails to meet the network guidelines, service quality guidelines, reporting and monitoring requirements, or other duties imposed on it by this rule, any affected telecommunications corporations may file a petition with the Commission to enforce the provisions of this rule. The proceeding may be brought on an expedited basis as provided in 54-8b-17.

2. Service Interruption -- A telecommunications corporation shall be entitled to a billing credit against amounts owed to an other telecommunications corporation for service interruption as follows:

a. If the telecommunications corporation's service or facility from another telecommunications corporation is interrupted and remains out-of-service for more than four but less than eight continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to one tenth of the providing telecommunications corporation's monthly rate for the affected service.

b. If the interrupted telecommunications corporation's service or facility from the providing telecommunications

corporation is interrupted and remains out-of-service for more than eight but less than 24 continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to the providing telecommunications corporation's monthly rate for the affected service.

c. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than 24 continuous hours after being reported by the-of-service interrupted telecommunications corporation or found to be interrupted by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to three times the providing telecommunications corporation's monthly rate for the affected service.

**KEY: interconnection, public utilities, telecommunications
June 1, 1999
Notice of Continuation December 30, 2013**

54-8b-2

**R850. School and Institutional Trust Lands, Administration.
R850-110. Motor Vehicle Travel Designations.
R850-110-100. 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-2-301(1)(g) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules consistent with general policies prescribed by the board of trustees, and regulate the unauthorized use or occupation of trust land, and Subsection 41-22-10.1(2) which authorizes the agency to designate trails, streets, or highways as open to off-highway vehicle use.

R850-110-200. Travel Route Designations.

1. Pending detailed route designations, all routes upon which exist a temporary public easement pursuant to Subsection 72-5-203(1)(a), other valid legal easement or right-of-way, or a permanent public access easement granted pursuant to agency rules are designated as open to motor vehicle use to the extent that such use is permitted by state law and local ordinances.

2. The agency may establish "Designated Use Only" areas.

(a) All routes within a "Designated Use Only" area are closed to motor vehicle use unless specifically designated open by the agency or authorized for a specific use through the issuance of a permit, easement, or lease.

(b) "Designated Use Only" areas may be established by the director through a written finding that such action is consistent with trust management objectives, current and projected land uses, and resource protection considerations.

3. All lands administered by the agency are closed to cross-country travel by all motor vehicles other than over-snow vehicles unless otherwise designated open or authorized for a specific use through the issuance of a permit, easement, or lease.

4. Except as authorized under Subsections (1) through (3), all trust lands are closed to motor vehicle use.

R850-110-300. Route Designations on Roads Maintained by Local Government Entities.

The agency may coordinate route designations with local government entities on routes maintained by them.

R850-110-400. Over-snow Vehicles.

All lands are open to cross-country travel by over-snow vehicles provided that:

1. the use is consistent with state law and not in conflict with current leases or permits; and

2. adequate snow depth exists to prevent resource degradation. Adequate snow depth is generally accepted to be at least 12 inches of consistent snow cover, but may vary depending on terrain or other ground conditions. The determination of whether there is adequate snow depth to prevent resource degradation shall be at the sole discretion of the agency.

R850-110-500. Route Width Designations.

Routes which have been designated as open to motor vehicle use by the agency may further be designated to allow for certain width classes of OHVs.

1. Twenty-six inches or less. Only OHVs under 26 inches wide may utilize routes designated in this class.

2. Fifty-two inches or less. Only OHVs under 52 inches wide may utilize routes designated in this class.

3. Routes which do not have a designated width class are open to all motor vehicles, provided that the vehicle width does not exceed the existing disturbed travel surface of the route.

R850-110-600. Date and Time Restrictions.

Routes which have been designated as open to motor vehicle use or areas which have been designated by the agency

as open to cross-country travel, may be restricted to allow for use only within certain times of year or times of day.

R850-110-700. Other Route or Area Restrictions.

Additional restrictions or designations other than those specifically identified by rule may be placed upon routes or areas which have been designated as open to motor-vehicle use by the director. Such actions shall be authorized through a written finding by the director that the action is consistent with trust-management objectives, resource protection considerations, or other justified reasons.

R850-110-800. Method of Designating Travel Routes.

Travel routes may be designated as open to motor vehicle use and areas may be designated as open to cross-country travel by the director through a written finding that such action is consistent with trust-management objectives, current and projected land uses, and resource-protection considerations. Routes or areas that have been designated open to motor vehicle use by the director shall be identified as specified in Subsection 41-22-10.1 by posting signs or designating by map or description. Additional designations with respect to route widths, date and time restrictions, or other restrictions shall also be identified through posted signs, map, or description. Posted signs shall conform to accepted interagency statewide OHV trail signing standards, and maps may be published in cooperation with other land-management agencies where practicable.

R850-110-900. Director's Authority to Close Routes and Areas.

The director may close specific routes and areas to motorized vehicle use, regardless of any previous route designation, when necessary for resource protection, to fulfill trust-management objectives, or for other justified reasons. Such action shall be documented in a written finding by the director. Amendments shall be made to existing route designation maps or descriptions and signs posted as necessary.

R850-110-1000. Scattered Sections and Isolated Parcel Designations.

The agency may coordinate route designations with adjacent land-management agencies to reduce confusion over ownership boundaries and complications with enforcement. Agency land-use and management objectives may be carefully considered when negotiating with other land-management agencies.

R850-110-1100. Blocked Land Designations.

The agency may coordinate designations of shared routes with adjacent land-management agencies to the extent that such designations are consistent with agency management objectives. All other routes and areas contained within land blocks shall be designated in accordance with trust-management objectives, current and projected land uses, and resource protection considerations.

R850-110-1200. Off-Trail Game Retrieval.

Use of a motor vehicle for the retrieval of downed game off of a designated route is prohibited, unless located within an area which has been designated as open for cross-country travel.

R850-110-1300. Recreational Use Requiring a Lease or Permit.

1. Commercial recreational use of trust lands, including competitive events or use of trust lands by commercial outfitters or tour operators, will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

2. Long-term non-commercial recreational use of trust

lands exceeding 15 consecutive days will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

R850-110-1400. Exemptions.

The following uses are exempt from the restrictions and prohibitions set forth in this rule:

1. Administrative use by the agency.
2. Use in conjunction with the administration or operation of a valid lease or permit.
3. Use of any fire, military, emergency, or law-enforcement vehicle for emergency purposes.
4. Law-enforcement response to violations of law, including pursuit.

KEY: land use, leases, permits, roads

October 25, 2010

53C-1-302(1)(a)(ii)

Notice of Continuation December 16, 2013 53C-2-301(1)(g)

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.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

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. 2014 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
13	71%
12	42%
11 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

- (A) The equipment is sold as a single unit. If the invoice

breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) 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
13	90%
12	81%
11	71%
10	59%
09	49%
08	38%
07	27%
06 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
13	84%
12	69%
11	54%
10	35%
09 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks;

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
13	91%
12	83%
11	75%
10	64%
09	55%
08	45%
07	36%
06	25%
05 and prior	13%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2014 percent good applies to 2014 models purchased in 2013.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
14	90%
13	71%
12	65%
11	60%
10	54%
09	48%
08	42%
07	37%
06	31%
05	25%
04	20%
03	14%
02	8%
01 and prior	3%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) 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
13	93%
12	87%
11	80%

10	70%
09	64%
08	57%
07	50%
06	42%
05	34%
04	23%
03 and prior	12%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

- (I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
- (II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
13	93%
12	87%
11	80%
10	71%
09	64%
08	57%
07	50%
06	42%
05	34%
04	23%
03 and prior	12%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway

vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
13	94%
12	90%
11	86%
10	78%
09	73%
08	68%
07	64%
06	59%
05	54%
04	47%
03	38%
02	29%
01	19%
00 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
13	62%
12	46%
11	21%
10	9%
09 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2014 model equipment purchased in 2013 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
13	50%
12	47%
11	44%
10	42%

09	39%
08	36%
07	33%
06	30%
05	27%
04	24%
03	21%
02	18%
01	16%
00 and prior	12%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2014 percent good applies to 2014 models purchased in 2013.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
14	90%
13	68%
12	64%
11	60%
10	56%
09	53%
08	49%
07	45%
06	41%
05	37%
04	33%
03	29%
02	25%
01	22%
00	18%
99	14%
98 and prior	10%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and
- (J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
13	47%
12	34%
11	24%
10	15%
09 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboards;
- (B) sign towers;

- (C) radio towers;
 - (D) ski lift and tram towers;
 - (E) non-farm grain elevators; and
 - (F) bulk storage tanks.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
13	96%
12	93%
11	91%
10	85%
09	82%
08	80%
07	78%
06	75%
05	74%
04	70%
03	64%
02	57%
01	50%
00	44%
99	37%
98	30%
97	23%
96	15%
95 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) 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 2014 percent good applies to 2014 models purchased in 2013.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
14	90%
13	63%
12	61%
11	58%

10	56%
09	53%
08	51%
07	48%
06	46%
05	43%
04	41%
03	38%
02	36%
01	33%
00	31%
99	28%
98	26%
97	24%
96	21%
95	19%
94	16%
93 and prior	12%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
13	92%
12	83%
11	81%
10	75%
09	71%
08	66%
07	61%
06	56%
05	50%
04	42%
03	32%
02	21%
01 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state

assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2014 percent good applies to 2014 models purchased in 2013.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
14	95%
13	90%
12	85%
11	80%
10	75%
09	70%
08	65%
07	59%
06	54%
05	49%
04	44%
03	39%
02	34%
01	29%
00	24%
99	18%
98 and prior	13%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft 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.

(y) 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
13	94%
12	88%
11	82%
10	77%
09	71%
08	65%
07	59%
06	54%
05	48%
04	42%
03	36%
02 and prior	30%

91	40%
90	38%
89	35%
88	32%
87	30%
86	27%
85	25%
84	22%
83	19%
82	17%
81	14%
80	12%
79 and prior	9%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.

(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
13	84%
12	70%
11	54%
10	36%
09	20%
08 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
13	97%
12	95%
11	92%
10	90%
09	87%
08	84%
07	82%
06	79%
05	77%
04	74%
03	71%
02	69%
01	66%
00	64%
99	61%
98	58%
97	56%
96	53%
95	51%
94	48%
93	45%
92	43%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
13	75%
12	50%
11	25%
10 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2014.

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. 2014 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	820
2)	Cache	707
3)	Carbon	525
4)	Davis	870
5)	Emery	504
6)	Iron	801
7)	Kane	422
8)	Millard	804
9)	Salt Lake	710
10)	Utah	755
11)	Washington	659
12)	Weber	808

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	720
2) Cache	603
3) Carbon	418
4) Davis	764
5) Duchesne	490
6) Emery	406
7) Grand	389
8) Iron	701
9) Juab	450
10) Kane	324
11) Millard	705
12) Salt Lake	610
13) Sanpete	542
14) Sevier	567
15) Summit	466
16) Tooele	456
17) Utah	653
18) Wasatch	492
19) Washington	561
20) Weber	709

(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	574
2) Box Elder	567
3) Cache	458
4) Carbon	277
5) Davis	615
6) Duchesne	344
7) Emery	255
8) Garfield	213
9) Grand	245
10) Iron	557
11) Juab	303
12) Kane	179
13) Millard	558
14) Morgan	391
15) Piute	336
16) Rich	179
17) Salt Lake	464
18) San Juan	181
19) Sanpete	397
20) Sevier	422
21) Summit	317
22) Tooele	305
23) Uintah	375
24) Utah	501
25) Wasatch	342
26) Washington	413
27) Wayne	332
28) Weber	564

(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	472
2) Box Elder	468
3) Cache	355
4) Carbon	178
5) Daggett	195
6) Davis	514
7) Duchesne	241
8) Emery	158
9) Garfield	115
10) Grand	149
11) Iron	455
12) Juab	201
13) Kane	82
14) Millard	454
15) Morgan	289
16) Piute	235
17) Rich	83
18) Salt Lake	360
19) San Juan	83
20) Sanpete	298

21) Sevier	324
22) Summit	220
23) Tooele	208
24) Uintah	277
25) Utah	403
26) Wasatch	244
27) Washington	310
28) Wayne	234
29) Weber	461

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	574
2) Box Elder	622
3) Cache	574
4) Carbon	574
5) Davis	627
6) Duchesne	574
7) Emery	574
8) Garfield	574
9) Grand	574
10) Iron	574
11) Juab	574
12) Kane	574
13) Millard	574
14) Morgan	574
15) Piute	574
16) Salt Lake	574
17) San Juan	586
18) Sanpete	574
19) Sevier	574
20) Summit	574
21) Tooele	574
22) Uintah	574
23) Utah	631
24) Wasatch	574
25) Washington	679
26) Wayne	574
27) Weber	627

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	243
2) Box Elder	262
3) Cache	271
4) Carbon	131
5) Daggett	161
6) Davis	274
7) Duchesne	168
8) Emery	140
9) Garfield	105
10) Grand	135
11) Iron	264
12) Juab	154
13) Kane	110
14) Millard	197
15) Morgan	199
16) Piute	193
17) Rich	106
18) Salt Lake	228
19) Sanpete	196
20) Sevier	201
21) Summit	204
22) Tooele	189
23) Uintah	209
24) Utah	253
25) Wasatch	211
26) Washington	231
27) Wayne	174
28) Weber	303

(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	53
2) Box Elder	96
3) Cache	121
4) Carbon	50
5) Davis	52
6) Duchesne	54
7) Garfield	49
8) Grand	50
9) Iron	50
10) Juab	51
11) Kane	49
12) Millard	48
13) Morgan	65
14) Rich	49
15) Salt Lake	54
16) San Juan	55
17) Sanpete	55
18) Summit	49
19) Tooele	52
20) Uintah	55
21) Utah	51
22) Wasatch	49
23) Washington	49
24) Weber	78

23) Tooele	72
24) Uintah	83
25) Utah	66
26) Wasatch	52
27) Washington	65
28) Wayne	90
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	23
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	24
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

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	16
2) Box Elder	60
3) Cache	85
4) Carbon	15
5) Davis	16
6) Duchesne	20
7) Garfield	15
8) Grand	15
9) Iron	15
10) Juab	16
11) Kane	15
12) Millard	14
13) Morgan	29
14) Rich	15
15) Salt Lake	16
16) San Juan	18
17) Sanpete	20
18) Summit	15
19) Tooele	15
20) Uintah	20
21) Utah	16
22) Wasatch	15
23) Washington	14
24) Weber	45

(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

(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	75
3) Cache	72
4) Carbon	52
5) Daggett	53
6) Davis	61
7) Duchesne	69
8) Emery	72
9) Garfield	79
10) Grand	80
11) Iron	76
12) Juab	65
13) Kane	74
14) Millard	78
15) Morgan	68
16) Piute	91
17) Rich	66
18) Salt Lake	69
19) San Juan	79
20) Sanpete	63
21) Sevier	64
22) Summit	73

(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
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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;

- (e) evidence or documentation that supports the taxpayer's claim for relief; and

- (f) the taxpayer's signature.

(4) If the evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer in writing 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 information required under Subsection (3) is supplied, 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.

(1) 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.

(2) 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:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the

Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

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.

R884-24P-73. Urban Farming Assessment Pursuant to Utah Code Ann. Section 59-2-1703.

(1) For purposes of the property tax assessment for land used for urban farming, land is actively devoted to urban farming under Subsection 59-2-1703(2)(a)(iii) if the production per acre for a given area and a given type of land meets the productive capabilities of land classified as Irrigated I.

(2) The value of land qualifying for valuation under Section 59-2-1703 shall be determined by reference to Table 1, Irrigated I, in R884-24P-53.

**January 1, 2014
Notice of Continuation January 3, 2012**

Art. XIII, Sec 2

- 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
- 59-2-1703

KEY: taxation, personal property, property tax, appraisals

R907. Transportation, Administration.**R907-1. Administrative Procedures.****R907-1-1. General Provisions.**

All applications, Requests for Agency Action, Notices of Agency Action, and requests for review shall be processed as informal adjudicative proceedings pursuant to Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal or either party requests conversion to a formal proceeding and the presiding officer decides that conversion is in the public interest and does not prejudice the rights of any party. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the presiding officer from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review pursuant to Section 63G-4-301, only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA). When used in these rules, "director" means Presiding Officer except when used as Executive Director.

R907-1-2. Commencement by Department -- Notice of Agency Action -- Procedures.

(1) An adjudicative proceeding commenced by the department is initiated by a Notice of Agency Action, which the department shall mail or personally deliver to the person or persons against whom the action is proposed to be taken (respondents). UDOT shall publish the Notice of Agency Action if required by statute, any other rule, or the Utah Transportation Commission.

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

(e) a statement that, if the person requests an appeal of the agency action, the adjudicative proceeding will be conducted informally pursuant to these rules unless either the department or the respondent requests conversion to a formal adjudicative proceeding and the appropriate presiding officer identified in R907-1-3(2) grants the request;

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

(g) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(h) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(i) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount; and

(j) a statement that the respondent is entitled to agency review if he or she files a Request for Agency Review with the initiating division or office within 30 days from the date the Notice is deposited in U.S. Mail or personally served.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating

division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by sending a written request for review to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-3. Commencement By a Member of the Public -- Complete or Partial Denials of Applications or Requests for Agency Action -- Default.

(1) If the department denies, either completely or in part, an application or Request for Agency Action and that action is subject to agency review, the division or office issuing the denial shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. In addition, the reply shall inform the applicant that his written request for review must include any supporting documentation, including legal memoranda, that he or she wishes to be considered. The reply shall constitute the proposed order of the division or office making the decision and shall so indicate on the reply. If there is no appeal within 30 days, it shall become the final order of the department.

(2) Upon receiving a Request for Agency Review, the division or office shall first evaluate it to determine whether it meets the requirements of Section 63G-4-301(1), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:

(a) the Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the Deputy Director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Project Development Director or designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;

(e) the Executive Director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by department personnel located at department headquarters at the Calvin Rampton Complex.

(3) The positions listed above shall be the respective presiding officers. However, either the Executive Director or Deputy Director may designate another to act as a substitute. Additionally, when called to preside over adjudicative proceeding that involves access management or has potential "takings" or inverse condemnation implications, the Region Director may designate a group of individuals either to advise on the issue or to take over presiding officer duties. If the Region Director designates a group to take over presiding officer duties, he or she shall appoint:

(a) an odd-numbered group so that any decision will not result in a tie; and

(b) a chairperson.

(4) The person who issued the agency order to be reviewed may not be included in either of the groups established in paragraph (3). However, the person who issued the decision may be consulted, asked for the reasons underlying his decision, and called as a witness if the proceeding is converted to a formal one.

(5) Absent filing of a timely Request for Agency Review, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.

(6) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(7) A defaulting party may seek agency review of an Order of Default by sending a request for agency review to the presiding officer. If the Order of Default was issued by that officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-4. Agency Review -- Procedures.

(1) Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.

(2) Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the person required to decide on review may meet with the parties, if he or she considers it necessary. This meeting is not a hearing as contemplated under Title 63G, Chapter 4 Utah Administrative Procedures Act.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.

R907-1-5. Reconsideration.

(1) Within 20 days after issuance of the final order, any party may request reconsideration, stating the specific grounds upon which relief is requested.

(2) The person filing the request shall mail a copy to each party.

(3) The Executive Director, or his designee, shall issue a written order either denying or granting the request. If no order is issued within 20 days, the request shall be considered denied. If the request is granted in any part and a new final order is issued, it shall include the same information listed in R907-1-4, or R907-1-6 if the matter concerned motor carriers.

R907-1-6. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under Section 63G-4-402, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence. The department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.

(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the department's Executive Director may act as the administrative hearing officer. At the hearing, the motor carrier shall go first and is burdened to show why the department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statements or arguments and he may tape the proceedings. The rules of evidence do not apply.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.

R907-1-7. Formal Process and Hearing: Initiation.

(1) If, notwithstanding R907-1-1, the department wishes to initiate an adjudicative proceeding as a formal proceeding, the formal hearing process shall be conducted as follows:

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail,

or personally served upon the respondents;

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

(f) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(g) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(h) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(i) a statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections 63G-4-204 to 63G-4-209;

(j) a statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action; and

(k) a statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature and the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by sending a written request to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

R907-1-8. Formal Process and Hearing: Responses.

(1) In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:

- (a) UDOT's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief that the respondent seeks;
- (d) a statement of the facts; and
- (e) a statement summarizing the reasons that the relief requested should be granted.

(2) The response shall be filed with UDOT and one copy shall be sent by mail to each party.

(3) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.

(4) In the discretion of the Presiding Officer Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.

R907-1-9. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the presiding officer granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-8 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the presiding officer only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the presiding officer.

(3) Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(4) Granting of Petition. The presiding officer shall grant a petition for intervention if he or she determines that:

- (a) The petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
- (b) The interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(5) Order Requirements.

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

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

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

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

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

R907-1-10. Formal Process and Hearing: Conduct of Hearings.

All hearings before the Presiding Officer Director shall be governed by the following procedures:

(1) Public Hearings. All hearings shall be open to the public, unless otherwise ordered by the Presiding Officer Director for good cause shown. All hearings shall be open to all parties.

(2) Full Disclosure. The Presiding Officer Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Director shall use as

appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:

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

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

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

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

(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.

(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

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

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

(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with this rule.

(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.

(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.

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

(12) Record of Hearing. The Director shall cause an official record of the hearing to be made, at the agency's expense.

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

(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use, but may not be taken out of the office. If the party agrees to pay the costs, the department will make a copy to give to them.

(13) Preserving Integrity. This section does not preclude

the Director from taking appropriate measures necessary to preserve the integrity of the hearing.

(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.

(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

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

(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.

R907-1-11. Formal Process and Hearing: Decisions and Orders.

(1) Decision. The Director shall sign and issue an order that includes:

(a) a statement of the Director's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;

(b) a statement of the reasons for the Director's decision;

(c) a statement of any relief ordered;

(d) a notice of the right to apply for reconsideration;

(e) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(f) The time limits applicable to any reconsideration or review.

(2) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.

(3) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.

(4) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.

(5) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.

(6) Interim Orders. This section does not preclude the Director from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(7) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.

R907-1-12. Formal Process and Hearing: Reconsideration

and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration or rehearing, stating the specific grounds upon which relief is requested.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail to each party by the person making the request.

(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.

(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of this rule. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.

R907-1-13. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.

(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:

(a) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) there would be substantial prejudice to the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9.

(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:

(a) declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

(b) decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order shall contain: (a) the names of all parties to the proceeding on which it is based;

(b) the particular facts on which it is based; and

(c) the reasons for its conclusion.

(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R907-1-14. Emergency Orders.

Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.

(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(a) the facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) the threat requires immediate action by the Director of Commission member.

(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative proceedings;

(c) give immediate notice to the persons who are required to comply with the order; and

(d) if the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, prior to seeking judicial review.

(2) In any adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63G, Chapter 4.

R907-1-17. Judicial Review of Formal Adjudicative

Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63G-4-403.

R907-1-18. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts.

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

(c) The action may request, and the court may grant, any of the following:

- (i) declaratory relief;
- (ii) temporary or permanent injunctive relief;
- (iii) any other civil remedy provided by law; or
- (iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

(a) until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(b) if the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

(c) if a petition for judicial review of the same order has been filed and is pending in court.

R907-1-19. Waivers.

Notwithstanding any other provision of this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT. This waiver provision may not be construed to prohibit a finding of default as defined in this rule.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title 63G, Chapter 4 or any other federal, state statute, or federal regulation shall supersede any conflicting provision of this rule. It is the department's intent that, where possible, the provisions of this rule be construed to be in compliance with those superseding provisions.

KEY: administrative procedures, enforcement (administrative)

December 9, 2013

63G-4-101 through 502

Notice of Continuation August 11, 2011

72-1-102

R909. Transportation, Motor Carrier.**R909-1. Safety Regulations for Motor Carriers.****R909-1-1. Authority and Purpose.**

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40, (October 1, 2012), as amended by the Federal Register through August 23, 2013 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

R909-1-4. Implements of Husbandry.

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

R909-1-5. Cease and Desist Order - Registration Sanctions.

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

R909-1-6. Penalties and Fines.

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections

72-9-701 and 72-9-703.

R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

R909-1-8. MCS-150 Update Required.

Utah participates in the federal Performance and Registration Information Systems Management (PRISM) program which enforces the motor vehicle maintenance and requires updates to the USDOT number associated with the carrier responsible for the safety of each motor vehicle being registered. Utah based carriers are required to update their USDOT number information (MCS-150) at the time of vehicle registration with the Utah State Tax Commission, or at least every 12 months.

KEY: trucks, transportation safety, implements of husbandry

November 7, 2013

Notice of Continuation: November 1, 2011

72-9-103

72-9-104

72-9-101

72-9-301

72-9-303

72-9-701

72-9-703.

R926. Transportation, Program Development.**R926-11. Clean Fuel Vehicle Decal Program.****R926-11-1. Purpose and Authority.**

(1) As authorized in Utah Code Ann. Sections 41-6a-702 and 72-6-121 this rule establishes procedures for regulating access to high occupancy vehicle lanes by vehicles with a clean fuel vehicle decal regardless of the number of occupants.

(2) Federal law authorizes states to allow the use of high occupancy vehicle (HOV) lanes by inherently low emission vehicles (ILEV) and low emission and energy-efficient vehicles with only a single occupant through September 30, 2017, unless federal authorization is extended. Federal law further requires a state to limit or discontinue the use of these single-occupant vehicles if the presence of the vehicles has degraded the operation of the HOV facility.

R926-11-2. Definitions.

(1) "Hybrid" means a Low Emission and Energy Efficient vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code 166.

(2) "ILEV" means an Inherently Low Emission Vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code 166.

(3) "C decal" means a clean vehicle decal issued by the department.

(4) "C plate" means a clean fuel special group license plate issued by the Division of Motor Vehicles as had been previously authorized in Utah Code.

(5) "C permit" means a permit issued by the department to the owner of an eligible ILEV or Hybrid vehicle.

(6) "Department" means the Utah Department of Transportation.

(7) "HOV" means a highway lane that has been designated for the use of high occupancy vehicles pursuant to Section 41-6a-702.

R926-11-3. Permitting of Eligible Vehicles.

(1) Owners of an eligible ILEV and Hybrid vehicle registered in the state of Utah shall qualify for a C decal and C permit upon application to the department under permitting processes and payment of a fee defined under this rule.

(2) The owner of a vehicle issued a C decal and a C permit is prohibited from placing the C decal on any vehicle other than the vehicle for which the department has issued a C decal and C permit. Posting a C decal on a vehicle other than the vehicle for which the department has issued a C decal and C permit will render the vehicle owner ineligible to participate in the Clean Fuel Vehicle Program.

(3) The owner of a vehicle issued a C decal must have in the person's immediate possession the C permit issued by the department for that vehicle.

(4) The C decal must be placed in the windshield of the vehicle, centered near the rearview mirror and 4 inches from the top of the windshield. If the vehicle has an AS-1 line, the decal must be mounted below the line. The decal must be mounted directly onto the windshield and cannot be mounted with tape or any other device.

(5) The department shall maintain and publish a listing online of all ILEV and Hybrid vehicle makes and models eligible for a C decal and C permit.

(6) The department will charge a fee for the issuance of a C decal. The amount of the fee will be posted on the application in the amount established by the department in accordance with Section 63J-1-504.

(7) The department may restrict use of the HOV facility by single-occupant vehicle with a C decal if the operation of the facility is degraded. For the purposes of this rule, an HOV facility is considered degraded if vehicles operating on the facility are failing to maintain a minimum average operating

speed of 45 miles per hour 90 percent of the time over a consecutive 180 day period, during morning or evening weekday peak hour periods (or both).

R926-11-4. Issuance of C Decals and C Permits.

(1) Except as set forth in subsection (2), the department may not issue more than 6,000 C Decals.

(2) Not more frequently than once a year, the department may evaluate the operation of the HOV facility and determine whether the facility will continue to operate at an acceptable level of service. For the purposes of this rule, an HOV facility is considered to be operating at an acceptable level of service if vehicles operating on the facility are maintaining a minimum average operating speed of 55 miles per hour 90 percent of the time over a consecutive 180 day period, during morning or evening weekday peak hour periods (or both). Based on that evaluation and if the department determines that additional single-occupant vehicles with a C decal may operate in the HOV lane without compromising operation of the facility, the department may increase the number of clean fuel decals issued beyond the minimum set forth in subsection (1) and shall issue the appropriate number of C decals to eligible applicants as set forth under subsection (5).

(3) Vehicle owners with an eligible ILEV or Hybrid vehicle as defined by this rule must submit an application to the department for a C decal and C permit. The application, approved and issued by the department, shall contain the vehicle owner's name, the license plate number, the vehicle identification number, and the ILEV or Hybrid vehicle make and year model as a condition for obtaining a C decal and C permit.

(4) A vehicle owner must pay the fee for the issuance of a C decal and C permit within 30 days of the application being approved. If the owner does not pay the fee within 30 days, the application will be closed. After the application is closed, a vehicle owner must submit a new application for a C decal and C permit.

(5) If more applications for a C decal are received than the total number of decals the department may issue at any one time, C decals and C permits will be offered to randomly chosen applicants as they become available.

KEY: hybrid vehicles, C decals, C permits, clean fuel**December 9, 2013****41-6a-702****Notice of Continuation December 18, 2013****72-6-121**

R926. Transportation, Program Development.**R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.****R926-14-1. Purpose.**

The purpose of this rule is to establish the following:

- (1) administration of the Utah Scenic Byway program;
- (2) the criteria that a highway shall possess to be considered for designation as a state scenic byway;
- (3) the process for nominating a highway to be designated as a state scenic byway;
- (4) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road;
- (5) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and
- (6) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of corridor, and related notifications.

R926-14-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 52, Chapter 4; Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-14-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4. The following additional terms are defined for this rule:

- (1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.
- (2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All American Roads.
- (3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in Title 74, Chapter 4 and does not refer to any local scenic byway committee herein defined.
- (4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.
- (5) "De-designation" means removing a current state scenic byway designation by the committee from an entire existing scenic byway.
- (6) "Department" means the Utah Department of Transportation.
- (7) "Designation" means selection of a roadway by the committee as a state scenic byway or selection of an existing state scenic byway by the U.S. Secretary of Transportation as one of America's Byways.
- (8) "Federal policies" means those rules outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.
- (9) "Local legislative body" means the elected governing board of a political subdivision, such as a town, city, county, or tribal government.
- (10) "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.
- (11) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered

representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(12) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby local legislative bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(13) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(14) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(15) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(16) "State Scenic Byway" means a Utah roadway corridor that has been duly designated by the committee for its intrinsic qualities.

(17) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

R926-14-4. Utah State Scenic Byway Committee Organization and Administration.

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in Title 72, Chapter 4.

(2) The committee shall conduct business to administer the State Scenic Byway program within the State of Utah. This business shall include, but not be limited to:

- (a) designating, de-designating and hearing appeals of segmentation denials of state scenic byways;
- (b) recommending considerations for National and All-American Road recognition to the Legislature;
- (c) recommending applications to the NSBP;
- (d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and
- (e) other business as may be needed to administer the scenic byway program.

(3) The committee shall meet to conduct business necessary to administer the state scenic byway program.

(a) The meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by Title 52, Chapter 4, individual members may request to be connected to the meeting via teleconference, video conference, web conference, or other emerging electronic technology, if they make the request at least three days prior to the committee meeting to allow for arrangements to be made for the connection.

(b) All additional meetings called by the chair may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by Title 52, Chapter 4.

(i) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection (depending on the technology used), but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough

to accommodate anticipated demand.

(ii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for all participants and the technology used is generally publicly available.

(iii) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

(iv) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during a web conference may be taken continuously via a chat window, then read by the moderator during the time set aside for public input, with committee responding. In a teleconference, public participants may be requested to hold their comments until a designated period is opened by the chair.

R926-14-5. Criteria Required of a Highway to Be Considered for Designation as a State Scenic Byway.

(1) A road being considered for state scenic byway designation must meet all of the following criteria:

(a) the nominated road must possess at least two unusual, exceptional, or distinctive intrinsic qualities, as defined;

(b) the nominated road may be either a planned or existing route and in the case of a planned route, legal public access, safety standards and all-weather pavement must be guaranteed at completion of construction;

(c) roadway safety on the nominated road must be evaluated against and guided by American Association of State Highway and Transportation Officials (AASHTO) safety standards for federal aid primary or secondary roads;

(d) the nominated road must have strong local support for byway designation and the proponents must demonstrate this support and coordination;

(e) the nominated road must accommodate recreational vehicles or provisions should be made for travel by recreational vehicles;

(f) the nominated road need not lead to or provide connection to other road networks; it may be dead-ended, or provide only a single outlet for traffic;

(g) the nominated road need not be open during the winter months, but seasonal road closures must be clearly posted, shown on applicable maps, and specified in any promotional literature; and

(h) the nominated road may include portions of the Interstate Highway System, but only if the Interstate component is a small part of the mileage of the overall nominated scenic byway and is included primarily for continuity of travel.

(2) It is the intent of these criteria to be restrictive in nature so as to limit the number of designated state scenic byways in order to maintain the quality and integrity of the scenic byway system.

R926-14-6. Process for Nominating a Highway to Be Designated a State Scenic Byway.

(1) Nominations for a corridor to be designated a state scenic byway shall be forwarded to the committee by a local legislative body.

(2) The nomination application must demonstrate how the nominated road meets the criteria to qualify as a state scenic byway.

(3) The committee will act on a byway-related application only after the responsible organization has held public hearings and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(4) The committee will consider the nomination after review of the application and after a presentation by the nominating sponsor group, either at the byway location, or at a committee meeting. The committee will vote on proposed designations at the next committee meeting. The committee will report the results of the vote to the nomination sponsor.

(5) Individual communities along the byway corridor that do not support the designation of the byway within the limits of their community have the statutory right, as prescribed in Title 72, Chapter 4, to opt out of any new byway designation through official segmentation action of their local legislative body, but they become ineligible for byway grants and promotional considerations by doing so.

(6) Upon approval by the committee of a scenic byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of the approved alignment and limits of the designated corridor.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(7) On receiving notification of a newly designated state scenic byway, the department shall amend Rule 926-13 to include the description of the byway and the date of its approval. The department shall forward to the NSBP any electronic files needed to describe or display the new byway in online maps, brochures, or other publications of the NSBP. The department will add the scenic byway to the official highway map at its next printing.

R926-14-7. Process for Nominating a Highway to Be Designated a National Scenic Byway or All-American Road.

In addition to state recognition, state scenic byways may be nominated to the National Scenic Byways Program so that they may be recognized as a byway of national significance through designation as a National Scenic Byway or All-American Road.

(1) Local scenic byway committees shall notify the state committee of their intent to apply for National Scenic Byway or All-American Road status and the state committee shall in turn notify the Legislature of this intent.

(2) Local scenic byway committees desiring national designation are required by the National Scenic Byways Program to prepare nomination applications, adhering to the criteria outlined in applicable federal policies.

(a) A corridor management plan for the byway will be required by the NSBP to be prepared before a nomination application will be considered. The required information and criteria to be included in the corridor management plan are outlined in the federal policies.

(b) The NSBP will issue a call for applications, at which time the local scenic byway committee may submit a nomination application as long as the state scenic byway has been approved for consideration in accordance with the requirements of Title 72, Chapter 4.

(3) Local scenic byway committees are to confer with the state committee during the preparation of a corridor management plan and will submit their nomination applications to the committee for review prior to submitting to the NSBP.

(4) The committee will refer all considerations for America's Byways designations to the Legislature for approval, along with the recommendation of the committee. As required in Title 72, Chapter 4, Legislative approval must be obtained before any application for nomination may be submitted to the NSBP.

(5) Upon approval by the NSBP of a National Scenic Byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of any differences in alignment or limits as

related to existing state scenic byway designations.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(6) On receiving notification of a change in byway status to National Scenic Byway or All-American Road, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes and the date of NSBP approval.

R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The local legislative body may remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System (NHS) are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an NHS route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and NHS status, since de-designation or segmentation would not affect the ongoing applicability of NHS regulations and may not always produce the desired effect.

(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(5) Committee processes for de-designation may be initiated by the committee itself or by request from a local legislative body.

(6) Alternatively, segmentation of specific parcels or portions of a scenic byway may be considered directly by the local legislative body of a county, city, or town where the segmentation is proposed, as provided in Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are provided herein for committee actions.

(7) Requests to the committee for de-designation of state scenic byways shall be submitted by a local legislative body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for de-designation. Reasons may include, but are not limited to:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

(8) Local legislative bodies shall inform the committee and UDOT Program Development of their action to segment within 30 days of the date of the action to segment. The local legislative body shall include the discussion of the specific reasons for segmenting. Reasons may include, but are not limited to those identified in R926-14-8(7)(a) through (e).

(9) Parcels on existing byways may not be segmented out of a byway solely for the purpose of evading state and federal regulations pertaining to byway designation, but must also be considered non-scenic or otherwise meet the criteria listed in Paragraph (7). However, towns, cities, and counties may remove themselves entirely for any purpose, as provided in Title 72, Chapter 4.

(10) State and federal highway regulations require that no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

(11) Upon receipt of the local legislative body's action to segment, the committee chair will add the action to the agenda of the next committee meeting.

(12) The local legislative body shall provide the committee the following information at the next committee meeting:

(a) the date of segmentation, being the day the local legislative body took action on the request to segment;

(b) the defined limits of the segmented portion of the scenic byway, including route and milepost details and definitions;

(c) the approved meeting minutes from the public meeting(s); and

(d) a copy of the signed resolution from the local legislative body.

(13) After the responsible legislative body has heard and denied a request to segment a state scenic byway, the denial can be appealed to the committee. The appeal must include information regarding the public hearings, minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(14) Following discussion of the request or appeal, the committee will vote on the request for de-designation or appeal of the denial of segmentation. The committee will then forward the result of the vote to the requesting local legislative body or appealing party. For segmentation denial appeals heard by the committee and for de-designation actions, the date of approval by the committee is considered the official date of the segmentation or de-designation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

(15) Upon approval or disapproval of a de-designation or segmentation request or decision on appeal, the acting body, whether the committee or the local legislative body, shall notify the Utah Office of Tourism, the department and other interested agencies of the action taken.

(a) In the case of approval of a de-designation or segmentation, the acting body will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(b) In the case where the committee approves the de-designation of a scenic byway that had also been designated as a National Scenic Byway, the committee will inform the National Scenic Byway Program of the decision and make a request to the NSBP that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(c) In the case of a local legislative action on a segmentation request, the local legislative body shall also notify the committee and the local byway coordinator of the action taken. For segmentation requests heard by a local legislative body, the date of approval by the local legislative body is considered the official date of the segmentation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

(16) Appeals to the committee concerning local legislative

actions are handled as provided in Title 72, Chapter 4.

(17) On receiving notification of segmentation or designation, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes. The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP. The department will also show substantive changes on the official highway map at its next printing.

72-4-302
72-4-303
72-4-304

R926-14-9. Local Government Consent.

Consent of affected local governments along the byway corridor is required by Title 72, Chapter 4 for any change in scenic byway status.

R926-14-10. Requirements for Public Hearings to Be Conducted Regarding Changes to Status of a State Scenic Byway and Related Notifications.

(1) Whenever changes to the scenic byway status of a corridor or of a segment thereof are considered, one or more public hearings must be held for the purpose of receiving the public's views and to respond to questions and concerns expressed before action is taken.

(a) The organization initiating the request for change in status is responsible for arrangement, notification, and execution of the hearing(s). The responsible organization may be:

(i) an organization (local scenic byway committee, community, county or association of governments) submitting an application or request to the committee;

(ii) the committee, in the case of a process initiated by the committee itself; or

(iii) a local legislative body considering a segmentation request.

(b) The hearing(s) shall be held in the area affected by the proposed status changes.

(c) Multiple hearings in varied locations may be appropriate, based on the length of the corridor or the affected area within the corridor. The committee chair will review and approve the number and locations of hearings as proposed by the nominating organization to ensure collection of a broad base of public comments throughout the length of the corridor where the scenic byway status changes are proposed.

(d) The responsible organization shall invite the state committee and the local scenic byway committee to attend the public hearing(s).

(2) The required public hearing(s) may be held separately, or as an identifiable agenda item of a regular meeting of a local legislative body.

(3) Notification of all public hearings shall be made as required by the laws governing the responsible organization.

(4) At a minimum, the following information related to the proposed change in status is to be addressed at each public hearing:

- (a) the impact on outdoor advertising;
- (b) the potential impact of traffic volumes;
- (c) the potential impact of land use along the byway;
- (d) the potential impact on grant eligibility; and
- (e) the potential impact on the local tourist industry.

(5) The responsible organization shall keep minutes of the hearing, including a detailed summary of comments and the names and addresses of those making comments and shall make these available to the committee, along with proof of required notifications.

**KEY: transportation, scenic byways, highways
December 9, 2013**

52-4-207
63G-3-201
72-4-301
72-4-301.5

R930. Transportation, Preconstruction.**R930-6. Access Management.****R930-6-1. Purpose.**

- (1) The purpose of this rule is to:
- maximize public safety;
 - provide for efficient highway operations and maintenance of roadways; and
 - utilize the full potential of the highway investment.
- (2) This rule serves to establish highway access management procedures and standards to protect Utah's state highway system. The state highway system constitutes a valuable resource and a major public investment. The Utah Department of Transportation (Department) has an obligation and a public-trust responsibility to preserve and maintain the state highway system, protect the public investment in this system, and to ensure the continued use of state highways in meeting state, regional, and local transportation needs and interests. This rule also serves to establish a procedure for allowing and establishing new or existing highways as limited-access facilities, for the elimination of intersections and for the right to access restricted facilities.
- (3) The primary function of a state highway is to provide system continuity and efficiency of state highway system operation and maintenance activities. Utah Code Section 72-4-102.5. A state highway may provide access to property as a secondary function. The primary function of city and county roads is to provide access to property. Owners of property adjoining a state highway have certain rights of access unless such access has been restricted by purchase or by legal action. The Department recognizes that property owners have the right of reasonable access to their property. This rule establishes standards that balance the need for reasonable access to properties with the need to preserve the smooth flow of traffic on the state highway system in terms of safety, capacity, and speed.
- (4) Failure to manage access to and from state highways can cause an increase in accidents, increased traffic congestion, decline in operating speed, loss of traffic carrying capacity, and increased traffic delays. This failure results in reduced traffic mobility, increased congestion, transportation costs and delays, and contributes to higher rates of property damage, personal injury, and fatal accidents. The proliferation of driveways, intersections, and traffic signals without regard to their proper design, location, and spacing degrades highway operation and performance and poses traffic hazards for the traveling public.
- (5) It is a goal of the Department to improve public safety in the development, design, and operation of the state highway system. In exercising this public safety duty, the Department enacts this rule to limit the number of conflict points at driveway locations, separate highway conflict areas, reduce the interference of through-traffic, and adequately space at-grade signalized and unsignalized intersections. The Department works closely with property owners and local authorities to provide reasonable access to the state highway system that is safe, and enhances the movement of traffic. The Department shall utilize all of the state highway right-of-way to the best advantage for highway purposes through a permit process that assesses and grants the number, location, width, and design of connecting streets and driveways.
- (6) This rule provides guidance to Department Permit Officers, local authorities, land owners, or developers for when a grant of access or encroachment permit is required, how to apply for a permit, what standards or guidelines are considered in the granting of an access and encroachment permits, and what to do when a variance is sought to deviate from the standards and requirements of this rule.

R930-6-2. Authority.

- (1) This rule is authorized by the following sections of the

Utah Code.

- Section 41-6a-216. Removal of plants or other obstructions impairing view - Notice to owner - Penalty.
- Section 41-6a-1701. Backing - When permissible.
- Subsection 72-1-102(11). "Limited-access facility" defined.
- Section 72-1-201. Creation of Department of Transportation - Functions, powers, duties, rights, and responsibilities.
- Section 72-3-109. Division of responsibility with respect to state highways in cities and towns.
- Section 72-4-102.5. Definitions - Rulemaking - Criteria for state highways.
- Section 72-6-117. Limited-access facilities and service roads - Access - Right-of-way acquisition - Grade separation - Written permission required.
- Section 72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law - Permit and fee requirements - Rulemaking - Penalty for violation.
- Section 72-7-103. Limitation on access authority.
- Section 72-7-104. Installations constructed in violation of rules - Rights of highway authorities to remove or require removal.
- Section 72-7-105. Obstructing traffic on sidewalks or highways prohibited.
- Section 72-7-503. Advertising - Permit required - Penalty for violation.

R930-6-3. Scope.

- (1) This rule supersedes the following publications:
- "Regulations for the Accommodation of Utilities on Federal Aid and Non Federal Aid Highway Rights-of-way" - 1970.
 - "Regulations for the Control and Protection of State Highway Rights-of-way" - 1982, and previous editions of this rule, "Accommodation of Utilities and the Control and Protection of State Highway Rights of Way" - 2006.
- (2) Utility accommodation in state highway right-of-way is governed by Rule 930-7.
- (3) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

R930-6-4. Application.

- (1) This rule applies to all state highways within the Department's jurisdiction.
- (2) The Department may issue grants of access and encroachment permits only when the application is found by the Department to be in compliance with this rule. The Department is authorized to impose terms, conditions and limitations as necessary and convenient to meet the requirements of this rule. In no event shall a grant of access or encroachment permit be issued or authorized if it is detrimental to the public health, welfare, and safety.
- (3) This rule requires that installation or modification of access facilities to the state highway system be made by permit from the Department. This rule provides a description of information to be contained in the grant of access and encroachment permit application, the standards against which the application shall be measured, and the administrative relief offered by the Department to review the balance of private property rights of reasonable access versus the public need to preserve the smooth flow of traffic on the state highway system. The standards, procedures, and requirements of this rule are in addition to other county or municipal land use regulation authority and apply to grant of access approvals on the state highway system. Local authorities may adopt similar policies or procedures for application of access management on other

street systems.

(4) If any part or parts of this rule are held to be unlawful, such unlawfulness may not affect the validity of the remaining parts of this rule. Nothing in this rule shall be construed to disqualify the Department from receiving federal participation on any federal-aid highway project.

R930-6-5. Definitions.

(1) "AADT" means the Annual Average Daily Traffic, the average 24-hour traffic volume at a given location over a full 365-day year, divided by 365.

(2) "AASHTO" means the American Association of State Highway and Transportation Officials.

(3) "ADT" means the Average Daily Traffic, the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period. The Department may, at its own discretion, define the appropriate time period (including days of the week) to be considered when measuring or calculating ADT.

(4) "Acceleration lane" means a speed-change lane, including tapered areas, for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can more safely merge with through traffic.

(5) "Access" or "access connection" means any driveway or other point of entry or exit such as a street, road, or highway that connects to the general street system. Where two public roadways intersect, the secondary roadway is considered the access.

(6) "Access approval" see "grant of access."

(7) "Access category" is a classification assigned to a segment of highway that determines the degree to which access to a state highway is managed. It is also referred to as "category."

(8) "Access control" see "controlled access highway."

(9) "Access corridor control plan" specifies the limitation or management of driveways, streets or other access points which balance the need for reasonable access to land development with the smooth and efficient flow of traffic defined by safety, capacity, and travel speed. Also referred to as a "corridor agreement."

(10) "Access management plan" means a roadway design plan that designates access locations and their design for the purpose of bringing those portions of roadway included in the access management plan into conformance with their access category to the extent feasible.

(11) "Access opening" means a vehicular access point through or across a limited-access or no-access line.

(12) "Access operation" refers to the utilization of an access for its intended purpose and includes all consequences or characteristics of that process including access volumes, types of access traffic, access safety, time of the access activity, and the effect of such access on the state highway system.

(13) "Access spacing" means the distance measured from the inside point of curvature of the radius of an intersection or driveway to the inside point of curvature of the adjacent intersection or driveway radius. In the case of a flared curb driveway, the distance is measured from or to the inside driveway edge.

(14) "Access width" means the width of the traveled portion of the access as it extends away from the main highway. Access width measures only the travel portion of the access; it excludes auxiliary or turn lanes, transitions, radii, flares, and curb and gutter.

(15) "Agricultural access" means an access to undeveloped or agricultural property.

(16) "Applicant" means any person, corporation, entity, designee or agency applying for a permit. As used within this rule, applicant also refers to the property or project subject to a grant of access or encroachment permit application.

(17) "Application fees" means the latest application fees established by the Department and approved by the legislature. Application fees are non-refundable and are designed to offset access management application review costs.

(18) "Arterial highway" is a general term denoting a highway primarily for through traffic, usually on a continuous route.

(19) "Auxiliary lane" refers to the portion of the roadway adjoining the traveled way for speed change, turning, storage for turning, weaving, truck climbing, and other purposes supplementary to through traffic movement.

(20) "Bandwidth" means the time in seconds or the percent of traffic signal cycle between a pair of parallel speed lines on a time-space diagram that delineate a progressive movement. It is a quantitative measurement of the through traffic capacity of a signal progression system. The greater the bandwidth the higher the roadway capacity.

(21) "Capacity" means the maximum rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a lane or a roadway during a given time period under prevailing roadway and traffic conditions. Capacity may refer to the entire roadway, a single lane, or an intersection. Measures of capacity may include, but are not limited to, traffic volumes, speed, throughput and density.

(22) "Channelizing island" means a defined area between traffic lanes for control of vehicle movements.

(23) "Clear roadside policy" refers to the policy employed by the Department to increase safety, improve traffic operations and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground, within the clear zone as defined in the AASHTO Roadside Design Guide and the Department's current standards and specifications, including Standard Drawing DD-17.

(24) "Clear zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry as referenced in the AASHTO Roadside Design Guide.

(25) "Control of access" means the condition where the right of owners of abutting land or any other persons having access to highway right-of-way is controlled by the appropriate public authority.

(26) "Controlled access highway" means a street or highway to which owners or occupants of abutting lands and other people have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway. See also "limited-access line" and "no-access line."

(27) "Contiguous property" means a parcel of land that has two or more adjoining properties abutting highway rights-of-way.

(28) "Corridor agreement" refers to a multi-agency cooperative agreement for managing the development, operations, and maintenance of a highway corridor or segment of highway corridor. In this rule, corridor agreements refer to agreements between the Department and one or multiple Local Authorities and are based on signal control plans and access corridor control plans agreed on and approved by the Department and local authorities.

(29) "County roads" are all roads that are or may be established as a part of a county system of roads.

(30) "Deceleration lane" is a speed-change lane, including tapered areas, enabling a vehicle to leave the mainstream of faster moving traffic and to slow to a safe turning speed prior to exiting the highway.

(31) "Department" means the Utah Department of

Transportation. Where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, Department means an authorized representative of the Utah Department of Transportation.

(32) "Department Region permitting office" refers to the permitting office of the Utah Department of Transportation regional offices.

(33) "DVH" means the design hour volume, an hourly traffic volume determined for use in the geometric design of highways. It is by definition the 30th highest hour vehicular volume experienced in a one-year period. The Department shall determine the appropriate DVH conditions. In most cases the Department will require the use of the peak hour volume as the DVH, typically in a range of 8-12 percent of AADT if actual volume data not available. For rural areas and recreational routes the Department will typically require the use of the 30th highest hour for DVH.

(34) "Design speed" means the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern as referenced in the most recent addition of the AASHTO "A Policy on Geometric Design of Highways and Streets."

(35) "Divided highway" means a highway with separated traveled ways for traffic in opposite directions, such separation being indicated by depressed dividing strips, raised curbing, traffic islands, or other physical barriers so constructed as to discourage crossover vehicular traffic.

(36) "Driveway" refers to an access constructed within the public highway right-of-way, connecting the public highway with the adjacent property. Driveway to highway connection designs may include, but are not limited to, curb cuts and radius curb returns.

(37) "Driveway angle" means the angle of the driveway alignment relative to the highway alignment. The driveway angle refers to the alignment of a driveway near and at the connection with the highway. The driveway angle is measured between the alignment of the driveway and the alignment of the highway traveled way.

(38) "Driveway spacing" means the distance between adjacent driveways on the side of the roadway as measured from near edge to near edge, considered necessary for the safe ingress and egress of vehicles and the safe operation of the highway at its posted speed.

(39) "Easement" is an interest in real property that conveys use, but not ownership, of a portion of an owner's property.

(40) "Encroachment" is the use of highway right-of-way.

(41) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right-of-way.

(42) "Expressway" is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

(43) "Federal-aid highway" is a highway eligible to receive Federal aid.

(44) "FHWA" means the Federal Highway Administration.

(45) "Freeway" is an expressway with full control of access.

(46) "Freeway one-way frontage road" is a one-way public street that runs parallel to a freeway and provides direct freeway access through ramps that connect the freeway main lane and frontage road.

(47) "Frontage road" is a public street or road auxiliary to and normally alongside and parallel to the main highway, constructed for the purposes of maintaining local road continuity and the controlling of direct access to the main highway.

(48) "Full access" means that ingress and egress is afforded at the point of access. It does not mean full movement.

(49) "Full movement" means that all possible vehicle turning movements are afforded at the point of access.

(50) "Functional classification" refers to a classification system that defines a public roadway according to its purposes and hierarchy in the local or statewide highway system.

(51) "General street system" is the interconnecting network of city streets, county roads, township roads, and state highways in an area.

(52) "Grade separation" is a crossing of two roadways, a roadway and a fixed guideway, a roadway and a pedestrian walkway, or bike path in such a way that neither facility interferes with the operation of the other.

(53) "Gradient or grade" means the rate or percent change in slope, either ascending or descending from or along the highway measured along the centerline of the roadway or access.

(54) "Grant of access" is the document that specifies requirements and conditions under which a driveway, curb cut, or other vehicular access point is granted. Also referred to as grant of access approval or access approval. Unless specified, references to grant of access refer to grants of access and temporary grants of access.

(55) "Hierarchy of the roadway" refers to the functionality and the mobility flow of traffic across a system of highway facilities. The natural progression to flow from a highest order facility of high capacity and high operational speed serving major economic centers to the lowest order facility of low volume, low speed and serving multiple driveway connections.

(56) "Highway" is a general term for denoting a public way for the transportation of people, materials, and goods, including the entire area within the right-of-way. Also referred to as road.

(57) "Interchange" is a facility that provides ramps for access movements between intersecting roadways that are separated in grade. The ramps and any structures used to accomplish the movement of traffic between the roadways are considered part of the interchange.

(58) "Interchange crossroad access spacing" means the distance measured between the interchange ramp gore area (point of widening on the crossroad) and the adjacent driveway or street intersection.

(59) "Intersection" is the general area where two or more highways or streets join or cross at-grade.

(60) "Intersection sight distance" is the distance at which a motorist attempting to enter or cross a highway is able to observe traffic in order to make a desired movement. The required distance varies with the speed of the traffic on the main highway.

(61) "Interstate highway system" refers to the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments. It is also referred to as interstate.

(62) "Inventory" means the listing maintained by the Department that gives the access category for each section of state highway.

(63) "ITE" means the Institute of Transportation Engineers.

(64) "Lane" is the portion of a roadway for the movement of a single line of vehicles. It does not include the gutter or shoulder of the roadway.

(65) "LOS" means level of service, a qualitative measure describing a range of traffic operating conditions such as travel speed and time, freedom to maneuver, traffic interruptions, and comfort and convenience as experienced and perceived by motorists and passengers. Six levels of service are defined from A to F, with A representing the free flow travel conditions and F representing extreme traffic congestion. LOS shall be evaluated according to the procedures and conditions defined in

the most recent edition of AASHTO "A Policy on Geometric Design of Highways and Streets."

(66) "Limited-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to limit and control access across such lines and thereby preserve the functionality, operation, safety, and capacity of the highway system. The highest priority and consideration for access category spacing standards and design apply where 1 a lines exist. Also referred to as line of limited-access, limited-access highway, limited-access freeway or limited-access facilities (See Utah Code Section 72-1-102(11)).

(67) "Local authority" means the governing body of counties and municipalities.

(68) "Local road" includes any road or highway in public ownership that is not designated part of the Utah state highway system or as defined by Utah Code. It is also referred to as a "local street."

(69) "Median" means the portion of a roadway separating the traveled ways for opposing traffic flows.

(70) "Median island" means a curbed island that prevents egress traffic from encroaching upon the side of the drive used by ingress traffic. The island ensures that ingress traffic has the necessary maneuvering space.

(71) "MPH" means miles per hour, a rate of speed measured in miles per hour.

(72) "MUTCD" means the current Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(73) "No-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to disallow connections across such lines. No-access lines are of the highest priority and order of the state highway system and have been established to preserve and protect the functional operation of the adjacent facility. No-Access Lines are created through the purchase of access rights. The purchase of these access rights may utilize federal, state, or combination of federal and state funds. Also referred to as line of no-access or no-access facilities.

(74) "Peak hour" means the hour of the day in which the maximum volume occurs.

(75) "Peak hour volume" see "design hour volume."

(76) "Permit" as referenced under this rule may include grant of access or encroachment permit. Permits defined under this rule do not include other written permission that may be required by local authorities for utility work in the state highway right-of-way, and other permits referenced in other applicable rules.

(77) "Permit issuance date" means the date when the authorized Department official signs the permit electronically or by any other means.

(78) "Permittee" means any person, unit of government, public agency, or any other entity to whom a grant of access or encroachment permit is issued. The permittee is responsible for fulfilling all the terms, conditions and limitations of the grant of access or encroachment permit.

(79) "Person" means any individual, partnership, corporation, association, government entity, or public or private organization of any character other than a state agency, as noted in Section 63G-3-102(12).

(80) "Posted speed" means the maximum speed limit for a specified section of highway.

(81) "Public authority" means a public administrative agency or corporation authorized to administer a public facility.

(82) "Reasonable alternate access" refers to conditions where access to the general street system from a property adjoining a state highway can be achieved by way of another alternative including but not limited to a lesser function road, internal street system, or dedicated rights-of-way or easements. For example, where a subject property adjoining a state highway also adjoins or has access to an internal street system, such

access shall be considered a reasonable alternate access and any access to the state highway shall be considered an additional access. Determination of reasonable alternate access shall be determined in consultation with the appropriate local authority and as prescribed in this rule.

(83) "Relocate" means to remove and establish in a new place and may include, if necessary to conform a property's access to the provisions of this rule, merging or combining non-conforming access with other existing access so as to eliminate the non-conformance. In such event, the property owner or permittee, if applicable, may be required to remove all physical elements of the non-conforming access such as curb cuts and surfacing material and install curbing, barriers, or other physical separators to prevent continued use of the access.

(84) "Right-in right-out" refers to a type of three-way road intersection where turning movements of vehicles are restricted with only right turns allowed. Also refers to intersection or driveway movements restricted to right-turn ingress and right-turn egress movements only.

(85) "Right-of-way" is a general term denoting property or property interest, usually in a strip devoted to transportation purposes.

(86) "Road" see "highway."

(87) "Roadside" means the area between the outside shoulder edge and the right-of-way limits.

(88) "Roadway" means the portion of a highway, including shoulders, for vehicular use.

(89) "Rural" includes areas incorporated, or designated by census, with a population of less than 5,000.

(90) "Shared access" is an access point serving more than one parcel or landowner.

(91) "Shoulder" means the paved or unpaved portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles.

(92) "Signal" means a traffic control signal. It is also used to refer to a signalized intersection or traffic signal.

(93) "Signal control plan" is a comprehensive action plan for identification of signal locations along a corridor or segment of a corridor. The purpose of a signal control plan is to provide for efficiency of signal progression and corridor functionality. This is also referred to as a corridor agreement.

(94) "Signalization" means the installation or modification of a traffic control signal.

(95) "Signal progression" means the progressive movement of traffic at a planned rate of speed without stopping through adjacent signalized locations along a corridor or within a traffic control system.

(96) "Signal spacing" means the distance between signalized intersections measured from the centerline of a signalized intersection cross street to the centerline of the adjacent existing or future signalized intersection cross street. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and is thought to be one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Traffic signals that are closely or irregularly spaced bring about increases in the number of accidents, stops, delay, fuel consumption, and vehicular emissions. Long and uniform signal spacing allows for more efficient progression throughout the corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows.

(97) "Slope" means the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(98) "Speed" refers to the posted legal speed limit at the access location at the time of permit approval. A higher speed

for access design must be used if the section of highway is presently being redesigned or reconstructed to a higher speed or an approved access control plan requires a higher speed.

(99) "Speed change lane" means a separate lane for the purpose of enabling a vehicle entering or leaving a roadway to increase or decrease its speed to a rate at which it can safely merge with or diverge from through traffic. Acceleration and deceleration lanes are speed change lanes.

(100) "State highway" includes those highways designated as state highways in Utah Code Title 72, Chapter 4, Designation of State Highways Act

(101) "Stewardship and oversight agreement" means the current agreement formalizing the roles and responsibilities of the FHWA, Utah Division and the Department in administering the Federal-Aid Highway Program. This agreement is available from the Department's website.

(102) "Stopping sight distance" means the distance required by a driver of a vehicle traveling at a given speed to bring the vehicle to a stop after an object on the roadway becomes visible. It includes the distance traveled during driver perception and reaction times and the vehicle braking distance.

(103) "Storage length" means the additional lane length added to a deceleration lane to store the maximum number of vehicles likely to accumulate in the lane during a peak hour period to prevent stored vehicles from interfering with the function of the deceleration lane or the through travel lanes.

(104) "Street" is a general term for denoting a public way or private way for purpose of transporting people, materials, and goods.

(105) "Street spacing" means the distance between intersections (signalized or unsignalized) measured as the distance between the leaving point of tangent of a street access to the receiving point of tangent of the adjacent street access.

(106) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. A major structure is a highway structure with a span or multiple span length of 20 feet or more measured along the center line of the roadway and a minor structure is the same as a major structure except it is less than 20 feet.

(107) "Taper" means a transitional area of decreasing or increasing pavement width to permit the formation or elimination of an auxiliary lane.

(108) "Traffic control equipment" means equipment, including but not limited to, traffic control signs, traffic signal poles, circuitry and appurtenant equipment.

(109) "Temporary grant of access" is required from the Department whenever a temporary driveway or connection to a state highway is sought. A temporary grant of access shall expire within twelve months of the permit issue date or before as specified in the terms, conditions, and limitations of the temporary grant of access. No extensions may be granted. To reestablish a temporary access, the permittee or applicant shall submit a new grant of access application. Unless specified, references to grant of access include temporary grants of access.

(110) "TIS" means traffic impact study, a study that may be required by the Department or local authorities that addresses the impacts of a proposed development, mitigation of impacts, access usage, or land use to ensure the efficient flow of traffic.

(111) "Traveled way" includes the portion of the roadway for the movement of vehicles.

(112) "Urban" refers to a census designated area with a population of 5,000 or more or any portion of a designated urbanized Metropolitan Planning Organization planning boundary.

(113) "Variance" is a granting of permission to depart from the standards and requirements of this rule.

(114) "Warrant" is the criteria by which the need for a treatment or improvement can be determined.

(115) "Working day" includes any weekday in which a normal day of work can be performed exclusive of delays that result from inclement weather, labor disputes, and material shortages. It does not include weekends and legal holidays.

R930-6-6. Access Control.

(1) General.

(a) This section addresses general methods, requirements and limitations utilized to manage and control access to state highways.

(2) Access categories.

(a) Access category management system. This rule provides a system of ten highway access categories to which all sections of state highways have been or will be assigned.

(i) Each access category describes the function of the highways including the operational standards that are applied to maintain the highway's function in terms of mobility, capacity, traffic flow, and safety.

(ii) The access category is assigned based on, but not limited to, evaluation of the attributes and characteristics of whether or not the facility is a part of the National Highway System, FHWA functional classification, urban or rural designation, and posted speed.

(iii) The number, spacing, type, and location of accesses and traffic signals have a direct and often significant effect on the capacity, speed, and safety of the highway and are therefore managed by this category system which establishes a hierarchy of the roadway for access management.

(iv) The spacing and design standards for each category are necessary to ensure the highway functions at the levels expected for its assigned access category.

(v) The access management standards of this rule have been developed for segments or classifications of highways that have similar context and functions. Access Management standards have been established to achieve safety, capacity, and traffic flow objectives for each classification.

(vi) Implementation of the statewide access management requirements of this rule ensures equitable, uniform, consistent, and systematic application of access management standards.

(b) Access category description. The following describe the function and application of the ten access categories used to manage access to state highways:

(i) Category 1: Freeway/interstate system facilities (I).

(A) Category 1 is appropriate for use on highways that have the capacity for high speed and high traffic volumes over medium and long distances.

(B) These facilities serve major interstate, intrastate, and inter-regional travel demand for through traffic. In urbanized and metropolitan areas, they may also serve high volume and high speed intra-city travel.

(C) All interstate and freeway facilities are included in this category.

(ii) Category 2: System priority-rural importance (S-R).

(A) Category 2 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 2 highways are designed and intended to achieve a posted speed of 55 mph or higher in areas without signals and 45 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in rural areas.

(D) Direct access service to adjoining land is subordinate to providing service to through traffic movements.

(iii) Category 3: System priority-urban importance (S-U).

(A) Category 3 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 3 highways are designed and intended to achieve a posted speed of 50 mph or higher in areas without

signals and 40 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in urban areas.

(D) Direct access service to abutting land is subordinate to providing service to through traffic movements.

(iv) Category 4: Regional-rural importance (R-R).

(A) Category 4 is appropriate for use on highways that have the capacity for moderate to high speeds (generally greater than 50 mph) and relatively high traffic volumes.

(B) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance in rural areas.

(v) Category 5: Regional priority-urban importance (R-PU).

(A) Category 5 is appropriate for use on highways that have the capacity for moderate speed (generally 45 mph or higher) and moderate to high traffic volumes.

(B) There is a balance between direct access and mobility needs within this category.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance and through urban areas that have significant potential for development or redevelopment.

(vi) Category 6: Regional-urban importance (R-U).

(A) Category 6 is appropriate for use on highways that have the capacity for moderate to low speeds (generally to a speed range of 40 mph or less) and moderate to high traffic volumes.

(B) While this category provides service to through traffic movements, it allows more direct access to occur.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of Interstate or system importance but through urban areas that are significantly developed to the point where travel speed and capacity has eroded.

(vii) Category 7: Community-rural importance (C-R).

(A) Category 7 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access. These facilities move both regional and local rural traffic but with emphasis on local movements such as those common on small city Main Streets.

(viii) Category 8: Community-urban importance (C-U).

(A) Category 8 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access.

(C) These facilities move traffic through a single community or to an adjacent community but not generally used for long distance (greater than five mile) travel.

(ix) Category 9: Other importance (O).

(A) Category 9 is appropriate for use on frontage roads, back roads, service roads, critical connections of short distance, and other special use facilities.

(x) Category 10: Freeway one-way frontage road (F-FR).

(A) Category 10 is appropriate for use on one-way frontage road systems that provide direct access to and from freeway ramps. Specifically, this category applies to the one-way frontage roads.

(B) Freeway main lane and ramp components of the freeway/frontage road systems must meet the criteria defined for Category 1 facilities.

(c) Access category assignments. To make category assignments for specific sections of state highways, the Department may consider adopted administrative and functional classifications, National Highway System routes, designated urban areas, existing and projected traffic volumes, posted and

operating speed, current and future highway capacity and levels of service, current and predicted levels of highway safety, adopted state and local transportation plans and needs, the character of lands adjoining the highway, adopted local land use plans and zoning, the availability of existing and planned vehicular access from local streets and roads other than a state highway, and other reasonable alternate access provided by municipal streets and county roads. Category assignment boundaries shall be logical and identifiable. Category assignments shall maintain highway system hierarchy and facility continuity to the extent possible.

(i) Category reviews and reassignments. Requests for changes in the access category of a state highway or sections thereof must be submitted to the Department through the appropriate local authority and metropolitan planning organization where appropriate. Such requests must include information pertaining to the factors cited in this rule for determination of category assignment and explain the need for the requested change. The explanation must also discuss how the requested change is consistent with and conforms to the purpose and standards of this rule and does not compromise the public health, safety, and welfare. A reassignment in access category may not be granted solely to accommodate eventual or planned growth of an entity, a specific access request, or to allow the permitting of access connections that would otherwise not be permitted.

(A) Local authority coordination. Upon request by local authorities, the Department shall coordinate with local authorities in the review of zoning, subdivision, and other land use regulations affecting the safety and operation of state highways to ensure that future access requirements related to local land use decisions are consistent with the purposes and standards of this rule. The issuance or approval of any permit, agreement, plat, subdivision, plan, or correspondence does not abrogate or limit the regulatory powers of the Department in the protection of the public's health, safety and welfare.

(ii) Access category inventory. The Department maintains an inventory of each section of state highway listing its access category assignment. This inventory is available from the appropriate Department Region and District office or the Department's website. Mapping inventory may not be held as the sole determination for access category assignment. Field assessment by a Department Permit Officer or designee shall verify the appropriate access category assignment.

(iii) Category updates. The Department may review the access category inventory once every five years to accommodate requests and changes in the highway environment affecting the access requirements of the highway. The initial assignment of access categories and any subsequent revision must be determined in cooperation and coordination with local authorities to ensure category assignments are compatible with preserving and maintaining the highway's intended and designed function within the state highway system and within the context of the area's transportation needs and plans.

(3) Corridor agreements.

(a) General. The Department, in cooperation with local authorities, may draft agreements for the planned and future spacing or installation of access connections based on the assigned access category for the facility. The local authorities must consider these agreements upon approval of their local development orders. A corridor agreement in the form of a signal control plan or access corridor control plan may supersede an access category assignment. The following apply to all corridor agreements including signal control plans and access corridor control plans.

(i) The corridor agreement shall balance between state and local authority transportation planning objectives and preserve and support the current and future functional integrity of the highway.

(ii) The corridor agreement must receive the approval of both the Department and the local authority to become effective. This approval shall be in the form of a written agreement signed by the local authority and the appropriate Department Region Director.

(iii) To be considered in effect, the corridor agreement shall be noted and reflected in the local jurisdiction transportation master plan.

(iv) Where a corridor agreement is in effect, all action taken in regard to the access must be in conformance with the agreement and current design standards except by approval of the Department and local authority.

(b) Signal control plan. The Department may, at its discretion, initiate, direct or develop a signal control plan for a designated portion of a state highway. The following requirements apply for signal control plans in addition to those described for corridor agreements.

(i) A signal control plan must provide a comprehensive action plan for identification of signal locations along a designated portion of state highway. This plan shall, to the extent practical, meet the functional characteristics and design standards of the appropriate access category and requirements of the Department's Traffic and Safety division.

(ii) The signal control plan must indicate the location of existing and future signalized intersections. The plan must identify signal locations intended to be modified, relocated, realigned, removed, or added. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(c) Access corridor control plan. The Department or local authority may, at its discretion, initiate, direct or develop an access corridor control plan for a designated portion of a state highway. The following requirements apply to access corridor control plans in addition to those described for corridor agreements.

(i) An access corridor control plan must provide a comprehensive roadway access design plan for a designated portion of a state highway. This plan shall, to the extent feasible and given existing conditions, bring said portion of highway into conformance with its access category and its functional needs.

(ii) The access corridor control plan must indicate existing and future access locations and all access related roadway access design elements including signals to be modified, relocated, removed, or added, or to remain. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(iii) The access corridor control plan shall include current or future accommodation for multiple transportation modes, including vehicles, bicycles, pedestrians, and public transit.

(4) Limited-access and no-access lines.

(a) Application of limited-access control lines. Limited-access control for new classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in areas of the highway being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible.

(i) Short alignments. Limited-access control may be justified for limited lengths of high volume minor arterial highways, especially on new alignments and if adjacent to a freeway interchange.

(ii) Existing urban alignments. Limited-access control in urban areas on existing alignment shall not be allowed unless approved by the Department.

(b) Application of no-access control lines. Interstate and freeway facilities shall have no-access control lines.

(c) Designation of access control lines. Determination of the final location for limited-access and no-access lines,

including final access locations, shall be made by the Department. The following requirements and limitations apply:

(i) FHWA review and concurrence for access locations is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(ii) The access openings granted shall be accurately described in the property deed and shown on right-of-way maps and roadway construction plans.

(iii) After execution of the deeds, no change may be made in the access location, use, or size or additional access openings granted except as provided in this rule.

(iv) If a portion of a property which has no access to the highway is later sold, the Department has no obligation to grant an access to the property.

(5) Local authority highway projects.

(a) Compliance requirements. A public highway reconstruction project is not required to bring legal access into full compliance with current standards of this rule, except to the extent reasonable within the limitations and scope of the project, consistent design parameters, and available public funds.

(b) Maintenance responsibility. Vehicular use and operation of local roads where they connect to (access) a state highway is the responsibility of the local authority. The local authority shall maintain such state highway access locations in conformance with this rule to the extent feasible and within statutory and public funding limitations. The local authority may fund any necessary improvements by obtaining contributions from the primary users of the access or as off-site subdivision improvements necessary for the public safety.

(c) Consolidation and modification of access. Where multiple accesses service the same ownership, public highway reconstruction projects may combine or reduce the number of accesses or modify access size and design to meet current standards.

(d) Temporary access. Temporary access within a highway project construction zone may be permissible at the discretion of the Department. A temporary grant of access is required for any new temporary access location that provides access to the traveled portion of the highway.

(e) Interference with public highway construction. Under no circumstances shall the construction or reconstruction of a private driveway by a private interest interfere with the completion of a public highway construction project. The private interest must coordinate work with the Department project engineer for the project.

R930-6-7. Design Requirements.

(1) General.

(a) The design requirements presented herein are intended to protect the functional integrity of state highways, maintain and preserve traffic mobility, provide efficient and necessary access, while protecting the public health, safety, and welfare. Designs for access connections to state highways must comply with Department standards and conform to the current MUTCD. A design based on engineering standards and methods that are more exact than those presented in this rule may be allowed if the design meets the purposes of this rule, does not violate standards of this rule, is based on desirable nationally accepted standards, and is determined acceptable to the Department. Local authority standards that are more stringent than those required by this rule may be used only if determined acceptable by the Department.

(2) General criteria for granting access.

(a) General criteria. The Department may grant modified or new access that is in compliance with this rule.

(b) Reasonable alternate access. When an application is created for access to a state highway with assigned access category 4 through 9, the access may be granted if reasonable

alternate access cannot be obtained from the local street or road system. If the proposed access does not meet design or spacing standards, the access shall be denied if the proposed access on the property has reasonable alternate access available to the general street system.

(i) Reasonable alternate access from a city or county road shall be determined in consultation with the appropriate local authority and the applicant. A determination of reasonable access from a local street or road shall include consideration of the local street or road function, purpose, capacity, operational and safety conditions and opportunities to improve the local street or road.

(ii) Where a subject property adjoins or has access to a lesser function road or an internal street system or by way of dedicated rights-of-way or easements, such access will be considered a reasonable alternate access and any access to the state highway will be considered an additional access.

(iii) Direct access to the state highway may be approved if the alternative local access will create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway will not be a safety or operational problem to the highway.

(c) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(d) Signalized intersections. The Department shall give preference to public ways that meet or may be reasonably expected to meet signal warrants in the foreseeable future.

(e) Category 1. For highways and corresponding facilities with Category 1 designations, any new access or modification of existing access shall meet freeway/interstate design practices and Department and FHWA standards and must receive FHWA approval when the Interstate Highway system is involved.

(i) All private direct access to Category 1 highways, access ramps, and structures is strictly prohibited unless specifically authorized for official temporary highway construction purposes under Department contract and must receive approval from FHWA when the interstate highway system is involved.

(ii) Public access to a Category 1 facility shall only be provided by means of interchanges properly spaced, located, and designed in accordance with Department and FHWA standards and regulations.

(iii) Any new access or modification of existing access to Category 1 facilities shall separate all opposing traffic movements by physical constraints such as grade separations and non-traversable median separators.

(iv) A new interchange or, in the determination of the Department, a significant modification to an interchange on a Category 1 facility that is part of the interstate highway System requires the preparation of analyses and reports that meet current FHWA requirements and receive approval by FHWA.

(f) Category 2 and 3. For highways with Category 2 or 3 designations, access may be allowed by means of interchanges or public street intersections. Public street access to Category 3 highways shall be signalized.

(i) The Department may allow modifications to an existing private point of access abutting a Category 2 or 3 highway including relocation of the point of access within the limits of the property, if such modification or change will benefit the operation and safety of the highway, bring the access level of the highway into greater conformance with the access category, or be in the interest of public health, safety, and welfare.

(ii) Any direct private access granted for Category 2 or 3 highways shall be for right turns only and shall be closed when reasonable alternate access is available or based on additional criteria defined by the Department in the grant of access.

(g) Category 4 through 9. For highways with Category 4 through 9 designations, direct access may be granted if the

alternative local access would create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway does not create an operational or safety problem for the state highway.

(h) Category 10. For highways with Category 10 designations, direct access shall be provided only by means of public street intersections.

(i) All private direct access to Category 10 highways is strictly prohibited unless specifically authorized for official temporary highway construction or utility maintenance and operations purposes under Department contract.

(ii) Spacing between ramps and adjacent intersections shall accommodate weaving movements and storage requirements to ensure smooth and safe operations for the frontage road.

(iii) No access shall be allowed between an exit ramp and its downstream cross-street intersection or between an entrance ramp and its upstream cross-street intersection.

(iv) No access shall be permitted within 100 feet of the intersection of freeway ramp and one-way frontage road.

(3) Access placement requirements.

(a) Spacing requirements. Table 1 summarizes the minimum required signal spacing, street spacing, driveway spacing, and interchange crossroad access spacing for corresponding state highway access categories.

TABLE 1

State Highway Access Management Spacing Standards

Category	Minimum Signal Spacing (feet)	Minimum Street Spacing (feet)	Minimum Driveway Spacing (feet)	Minimum Crossroad to 1st Right-in Right-out Driveway (feet)	Interchange to 1st Inter-section (feet)	Access Spacing from last Right-in Driveway (feet)
1 (I)	N/A	N/A	N/A	n-a	n-a	n-a
2 (S-R)	5,280	1,000	1,000	1,320	1,320	1,320
3 (S-U)	2,640	N/A	N/A	1,320	1,320	1,320
4 (R-S)	2,640	660	500	660	1,320	500
5 (R-PU)	2,640	660	350	660	1,320	500
6 (R-U)	1,320	350	200	500	1,320	500
7 (C-R)	1,320	300	150	n-a	n-a	n-a
8 (C-U)	1,320	300	150	n-a	n-a	n-a
9 (O)	1,320	300	150	n-a	n-a	n-a
10 (F-FR)	1,320	660	N/A	n-a	n-a	n-a

"N/A" means not allowed
 "n-a" means not applicable

(i) Signal spacing. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and is thought to be one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Signals that are closely or irregularly spaced bring about increases in crashes, stops, delay, fuel consumption, and vehicle emissions. Long and uniform signal spacing allows for more efficient progression through a corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows. Signal spacing shall be as defined in this rule or as deemed necessary by the Department for the safe operation, capacity, signal progression, and proper design of the signal and adjacent accesses. Preference for the spacing, timing, and operation of a signal shall be given to highways and cross streets of a higher access category or function.

(ii) Street and driveway spacing. Access connections, including streets and driveways introduce conflicts and friction into the traffic stream of the main highway. Vehicles entering and leaving the main highway often slow the through traffic. The speed differentials between turning and through vehicles increase the potential for crashes. Increasing the distance

between intersections and driveways enhances traffic flow and safety by reducing the frequency of conflicts for the main highway and providing greater distances to anticipate and recover from turning maneuvers. Where feasible or required by this rule, accesses must be combined or closed to reduce frequency and increase spacing between accesses. The spacing must also be consistent with current signal progression efficiency and cause no degradation to existing operations.

(iii) Interchange crossroad access spacing. Freeway and expressway interchanges allow traffic to transition from freeways to arterial or other lower functioning roadways. Interchanges also serve as important focal points of roadside development in urban, suburban, and rural areas. Intersections that are too close to the arterial/freeway interchange ramp termini result in heavy weaving volumes, complex signal operations, frequent accidents, and recurring congestion. Access connections to interchange crossroads shall be sufficiently spaced to allow the smooth transition between the freeway or expressway and intersecting lower functioning roadways. The Department may require applicants to conduct a weaving or speed change lane analysis given unique area conditions. The Department may require applicants to use a distance greater than defined in this rule when said analysis shows that a greater spacing is necessary to provide safe and efficient weaving maneuvers.

(A) The following elements must be considered in determining minimum interchange crossroad access spacing distances:

(I) The distance required to weave across the through travel lanes.

(II) The distance required for transition into left-turn lane(s).

(III) The distance needed to store left turns with a low likelihood of failure.

(IV) The distance from the stop line to the centerline of the intersecting road or driveway.

(B) The minimum interchange to crossroad spacing requirements of Table 1 are based on the following definitions:

(I) "To 1st right-in right-out driveway," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first right-in right-out driveway intersection.

(II) "To 1st intersection," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first major intersection.

(III) "From last right-in right-out driveway," means the distance from the last right-in right-out driveway intersection to the interchange on-ramp gore area (point of widening on the crossroad).

(b) Emergency access. Emergency access may be granted on state highways with category 2 through 10 designations and where required by local safety regulations. Such direct emergency access may be permitted only if it is not feasible to provide the emergency access to a secondary roadway. Requests for such access must include a written explanation with references to local standards from the local authority safety official. Emergency Access may not be granted to accommodate general vehicular ingress or egress. The access shall be gated and locked.

(c) Agricultural access. Agricultural access may be granted to state highways with access to category 2 through 9 designations and where, in the determination of the Department, the property has no other reasonable alternate access. Additional agricultural access to property under the same ownership or controlling interest may be granted if the necessity for such additional access due to topography or ongoing agricultural activities is demonstrated. Agricultural accesses must be kept to the minimum necessary to provide access service. Agricultural access must meet minimum access design

and safety standards of this rule. A change in use of the parcel of land serviced by the agricultural access may require that the access be closed. The spacing criteria between accesses contained in this rule may be waived for agricultural access. All such agricultural accesses must meet the sight distance criteria of this rule.

(d) Access near at-grade railroad crossings. Access near an at-grade railroad crossing must not be located closer than 250 feet from the crossing. Circumstances may exist where greater spacing is required consistent with the appropriate access category spacing. See R930-5 for more information.

(e) Shared access. Shared access of two or more parcels may be required where a proposed new access or the redesign of an existing access does not meet spacing standards and criteria for the appropriate access category. The access location shall serve as many properties and interests as possible to reduce the need for additional direct access to the state highway.

(f) Offset placement. Where proposed or redesigned access connections which are offset and not separated by a non-traversable median are to be considered, every effort must be made to align opposing driveways and streets.

(g) Challenging topography. Where existing topography or other existing conditions make the required access spacing intervals not feasible, the Department may consider topography, established property ownerships, unique physical limitations, unavoidable or pre-existing historical land use patterns, and physical design constraints with a reasonable attempt to achieve the required access spacing.

(h) Access to limited-access facilities. Under limited-access control, the following additional limitations shall apply. Where there are conflicts between the following limitations and other requirements of this rule, the more stringent requirement shall be met.

(i) The maximum feasible and economic access control must always be obtained.

(ii) On bypasses of cities and towns, all property access shall be prohibited except where the bypass is in a low population town with little or no business and where inadequate public crossroads for property access exists.

(iii) Other than on bypass roads, a maximum of five accesses per mile on each side of the highway may be granted. Accesses to property shall only be granted opposite to each other.

(iv) Where any property has access to another public road or roads, no access shall be given closer than 1/2 mile from the public road nor shall any two granted accesses be closer than 1/2 mile. However, where the proposed project involves reconstruction on or near an existing highway where a home, business or other property development is located and lack of direct access to a home, business or other property development would involve excessive property damage and added construction costs, access openings may be provided within the other stated limitations.

(4) Access design requirements.

(a) Sight distance. Access points must be located and designed to provide adequate sight distance along the state highway and the access.

(i) Access design must meet AASHTO sight distance guidelines and Department standards.

(ii) Potentially obstructing objects, including but not limited to, advertising signs, structures, trees, and bushes must be designed, placed, and maintained to meet sight distance requirements for vehicles using the access.

(iii) Modifications to the existing highway may be required for access points with less than the required minimum sight distance. Modifications may include, but are not limited to, changes to horizontal or vertical alignments, addition of acceleration or deceleration lanes, roadway relocation, use or creation of other general street system facilities, or other

modifications as required by the Department.

(b) Access width. Access width shall be designed and constructed to properly accommodate the anticipated traffic volumes, lane geometries, and vehicle characteristics of both the access and the adjoining highway.

(i) Minimum and maximum access widths (feet):

(A) Commercial or industrial land uses:

(I) Two-way direction use: 25 feet minimum to 50 feet maximum.

(II) One-way direction use: 16 feet minimum to 30 feet maximum.

(B) Residential land uses:

(I) Two-way or one-way direction use: 16 feet minimum to 30 feet maximum.

(C) Agricultural uses:

(I) Two-way or one-way direction Use: 16 feet minimum to 32 feet maximum.

(ii) One-way approaches. The Department may treat adjacent one-way approaches (one-way in, one-way out) as one access when all of the following conditions are met:

(A) The one-way approaches are divided by a non-traversable median at least four feet wide but no more than 25 feet.

(B) Signing for the access median is clear and visible.

(iii) Future public streets. Applications for an access point intended to become a future public street access must consider long-term traffic projections, modal use, and agency standards to determine appropriate access widths.

(iv) Private openings for limited-access highways. The maximum size of private access openings shall be 16 feet for residences, 30 feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(c) Access radii. The turning radii of an access must accommodate the turning radius of the largest vehicle using the access on a regular basis.

(i) Minimum and maximum radii ranges:

(A) Commercial, industrial, or agricultural land uses:

(I) Urban areas: 30 feet minimum to 60 feet maximum.

(II) Rural areas: 20 feet minimum to 60 feet maximum.

(B) Residential land uses:

(I) Urban areas: 10 feet minimum to 15 feet maximum.

(II) Rural areas: 20 feet minimum to 30 feet maximum.

(ii) Where possible, applicants shall reduce the access radii to improve visual and physical separation of accesses and to reduce pedestrian conflicts by reducing the total access width at the roadway edge (i.e., at the intersection). Access radii shall be no larger than required to accommodate the volume and type of vehicles using the access on a regular basis.

(iii) Curb cut style driveways are typically required where curbs are present. However, radius curb returns may be used when determined by the Department to be necessary and consistent with existing or planned conditions.

(iv) Access points intended to become a future public street access may use the design criteria of the local authority and the Department to select appropriate radii, corner and intersection design. Access designs are subject to approval by the Department.

(d) Driveway profile. Driveways must be designed to minimize slope changes to prevent dragging and must conform to Department standards, including standard drawing GW-4-series.

(e) Driveway vertical curves. Driveway vertical curves must be as flat as feasible and at least 20 feet long. To prevent dragging, the following driveway vertical curve designs are prohibited:

(i) A hump or dip greater than 6 inches within a wheelbase of 10 feet.

(ii) Crest vertical curves exceeding a 3-inch hump in a 10-

foot chord.

(iii) Sag vertical curves exceeding a 2-inch depression in a 10-foot chord.

(iv) Rolled gutters crossed by traffic.

(f) Driveway angle. Driveway angles less than 80 degrees are prohibited. Whenever possible, driveways must provide a right (90-degree) driveway angle.

(i) Exceptions. For one-directional use driveways with a right-turn entry-only or a right-turn exit-only operation, driveway angles may not be less than 60 degrees. Whenever possible, these one-directional driveways must provide a right (90-degree) driveway angle.

(g) Access signing. Traffic control devices for accesses that serve the general public must conform to the current MUTCD. Stop or yield signs are required for all street intersections and driveways when warranted by traffic conditions.

(h) Emergency access. Emergency access features must be designed to accommodate emergency vehicle characteristics appropriate for the development or intended land use and in conformance with the Department driveway standards, including those defined in this rule. However, emergency access widths may be designed to serve one-way traffic and may be less than 16 feet wide.

(i) Emergency access surfacing must minimize its visibility while still providing sufficient strength.

(ii) Emergency access must be designed based on the standards of the local emergency services and accommodate emergency vehicles necessary to serve the site.

(iii) Emergency access must provide a suitable barrier to eliminate non-emergency use. The access must be signed for emergency services only and shall only be opened during emergencies.

(iv) The access, including but not limited to barriers and signing, shall be maintained by the permittee.

(v) Emergency access barriers shall not be placed within the state highway right-of-way.

(i) Other design elements. The Department may require other design elements or features to ensure accesses are designed and constructed in a manner that will encourage proper operations and safety. Additional design elements and features include, but are not limited to, the following:

(i) Positive barrier. The Department may require access with turn restrictions to provide positive barrier such as a non-traversable median to prevent unauthorized turns. Intersection or driveway islands that channel traffic movements may be required for turn-restricted movements when any of the following apply.

(A) No restrictive center median is in place or programmed to be constructed.

(B) When frequent violations of the turn restrictions are anticipated.

(ii) Parking and site circulation. Accesses must be designed to facilitate turning movements to and from the highway while preventing vehicle queues on the highway.

(A) Parking or storing vehicles within the state highway right-of-way is prohibited. Roadside businesses must provide sufficient private parking or storage space to handle their corresponding parking needs.

(B) No access may be granted for parking areas that require backing maneuvers within the state highway right-of-way. Circulation for parking facilities must be arranged to restrict backing onto the state highway and allow vehicles to enter and exit the site in forward drive. This requirement does not apply to residential single unit driveways.

(C) Accesses that have or are planned to have a gate across it, must be designed so the longest vehicle using the access can clear the highway when the gate is closed. For locations with prohibitive topographical features, applicants must provide a

wide shoulder for temporary standing while the gate is operated.

(D) The Department may require the review of the parking lot and circulation layout and require designs, terms, and conditions necessary to ensure the safe use of the access.

(iii) Modal considerations. Access designs must provide for the safe and convenient movement of all highway right-of-way users and modes of transportation including but not limited to pedestrians, bicyclists, transit, and the physically challenged. Sidewalks and bike lanes or paths may be required where deemed appropriate by the Department or when required by the local authority.

(iv) Storm drainage. All new or modified accesses must make provisions for site retention, detention, or accommodation of site originating surface run off such that no flow of storm water or spill shall utilize the state highway drainage system unless by prior analysis and agreement.

(A) Applicants must construct all driveways and buffer areas to maintain a positive drainage system within the highway right-of-way and not alter the stability of the roadway sub-grade.

(B) The Department is not liable for the quality of drainage waters originating at service stations or special industrial processing plants that are directed into irrigation canals through highway drainage system. Such drainage concerns are the subject of separate agreements and permits by the developers and irrigation companies.

(v) Roadside development lighting equipment. All lighting equipment for the roadside development must be placed outside the highway right-of-way. Directing light beams toward the eyes of approaching drivers on the highway is prohibited.

(5) State highway design requirements.

(a) General. This section describes the Department requirements for highway features located within the rights-of-way of any state highway. Highway features include, but are not limited to, traffic signs and street name signs, traffic signals, traffic control equipment, highway lighting, crosswalks, curb and gutter, sidewalks, and pavements. Installation of new features within the highway right-of-way and modifications to existing highway features necessary as part of permitted work must be completed at the expense of the permittee and in accordance with plans approved by the Department. Any damage to existing highway features must be repaired or restored at the expense of the permittee and in accordance with plans approved by the Department. Any work completed within state highway right-of-way must comply with Department standards and conform to the current MUTCD.

(i) Site specific requirements. For specific sections of state highway, the Department may provide additional requirement details for access design and construction, including but not limited to, pavement thickness and specifications, curb design and specifications, roadway fill design and compaction, testing and inspection, and other specific details.

(ii) Posted speed. A proposal for access may not presume a lower posted speed limit than currently posted or request a lower speed limit in order to accommodate the access unless specifically directed in writing by the Department. Where a traffic signal will be installed as part of the access construction, the access design and the anticipated posted speed limit after signal installation may be used for the overall access design at the discretion of the Department.

(b) Traffic signals. The installation of permanent traffic control devices, including but not limited to traffic signals is regulated by the MUTCD and Department guidelines and standards.

(i) Nothing in this rule is intended to require the Department to authorize a traffic signal or other permanent traffic control device.

(ii) The Department may, at its discretion, complete the installation of permanent traffic control devices. The permittee shall pay for direct costs and labor provided by the Department

for the installation and relocation of all traffic control devices within public right-of-way which are directly related to the use or construction of the permitted access.

(iii) Signal location, timing, and operation are not intended to serve or benefit single use or private access connections. Preference to signal location, timing and operation shall be given to highways and cross streets of a higher access category or function.

(iv) New traffic signals and modifications to existing traffic signals shall be allowed only as approved by the Department. No traffic signal may be authorized without the completion of an analysis that is sealed (stamped) by a Professional Engineer licensed in the State of Utah and meets MUTCD signal warrants and all requirements of the Department. The traffic signal analysis must consider traffic signal system operation, design, construction feasibility, and safety.

(v) For existing or proposed accesses that meet MUTCD warrants and the Department requirements for signalization, but do not meet the spacing or placement requirements of this rule, the access shall be reconstructed to conform to appropriate design criteria and eliminate or reduce the traffic movements that caused the traffic signal warrant to be met.

(vi) Where the access may warrant signalization in the future, phasing of the installation may be required.

(vii) The Department may, at its discretion in consideration of granting access, require design, and operational modifications, restrict one or more turning movements, or deny access.

(viii) Category 2 and 3. For state highways with Category 2 or 3 designations, signals at intersections with major cross streets or roads of equal importance may be programmed to optimize traffic on both streets equally. Cross-streets of lesser importance need not be optimized equally. Traffic signals must be programmed to allow a desirable highway bandwidth of at least 50 percent. The efficiency of the signal system must be analyzed utilizing traffic volume, capacity, and level of service calculations. The analysis must determine the optimum progression speed under both existing and proposed conditions.

(ix) Category 4, 5 and 6. For state highways with Category 4, 5, or 6 designations, where it is not feasible to meet one-half mile spacing and where signal progression analysis indicates good progression (40 percent efficiency or better), or does not degrade the existing signal progression, a full movement intersection may be allowed. In such cases, a variance and subsequent traffic study is required. Spacing to nearby intersections must be sufficient to accommodate the future vehicle storage queues for both turning and through movements. The access location must also meet other access spacing, design, and need requirements of this rule.

(c) Surface. The permittee must appropriately surface driveways and connections between the traveled way and the service area. For accesses adjoining paved highways, the permittee must pave the access surface to the right-of-way line. Pavement materials used within the state highway right-of-way shall meet Department standards and requirements.

(i) Preservation of new pavement. The Department may not issue permits to cut or excavate on newly constructed, paved, or overlaid state highways. This preservation restriction applies for a period of two years after installation of pavement or overlay. Exceptions to preservation of new pavement restrictions shall be made only in cases of emergency, and only with the approval of the appropriate Department Region Director or designee.

(d) Median treatments. A raised median or movement channelization may be required.

(i) Nothing in this rule is intended to require the Department to authorize a left turn movement at any location.

(ii) Left turn movements may not be permitted if a median

is already established and the proposed opening of the median does not provide, in the determination of the Department, any significant operational or safety benefits to the general public or will be counter to the purpose of the median construction and the continued function of the highway at the category assigned to it.

(iii) A median opening may not be allowed if any of the following apply:

(A) A safety or hazard situation is likely or identified.

(B) The location is within the functional area of an existing or planned interchange, signalized intersection, or major unsignalized intersection.

(iv) Category 2 and 3. For state highways with Category 2 or 3 designations, Left turn movement may be permitted if all of the following apply:

(A) Access does not have potential for signalization.

(B) Travel is circuitous in one direction that exceeds two miles.

(C) Left turn movement can be designed to the Department's satisfaction that meets all safety, design, and operational standards.

(v) Category 4, 5, 6, 7 and 8. The following apply for state highways with Category 4, 5, 6, 7 or 8 designations:

(A) If a restrictive median exists, left turns at unsignalized intersections shall be restricted unless the restriction of these movements will cause a safety or operations problem or cause an out-of-direction movement of greater than one mile (or one-half mile for state highways with Category 6, 7, or 8 designations).

(B) If a flush or traversable median exists, left turns may be permitted unless an operational or safety problem is identified.

(e) Auxiliary lanes. Auxiliary lanes for state highways must conform to Department Standards, including standard drawing DD-series.

(i) Auxiliary lanes may be required where any of the following apply:

(A) An auxiliary lane has been specifically identified and documented necessary to prevent or correct an operational or safety condition that will be associated with traffic imposed by the creation of a new access or an existing access.

(B) Any of the following apply for an access to an access category 2 or 3 highway:

(I) A left turn lane with deceleration, storage, and taper lengths is required for any access with a projected peak hour left turn ingress turning volume greater than 5 vehicles per hour.

(II) A right turn lane with deceleration and taper lengths is required for any access with a projected peak hour right turn ingress turning volume greater than 10 vehicles per hour.

(III) A right turn lane with acceleration and taper lengths is required for any access with a projected peak hour right turning volume greater than 10 vehicles per hour.

(IV) A left turn acceleration lane may be required if such a design will be a benefit to the safety and operation of the roadway.

(V) Left turn acceleration lanes are generally not required where the posted speed is less than 50 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(C) The following applies for an access to an access category 3 highway:

(I) Left turn acceleration lanes are generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(D) The following apply for an access to an access category 4 or 5 highway:

(I) A left turn deceleration lane with taper and storage length is required for any access with a projected peak hour left

ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the required deceleration length.

(II) A right turn deceleration lane and taper length is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the required deceleration length.

(III) A right turn acceleration lane and taper length is required for any access with a projected peak hour right turning volume greater than 50 vehicles per hour when the posted speed on the highway is greater than 40 mph. The taper length must be included in the required acceleration length. A right turn acceleration lane may also be required at a signalized intersection if a free-right turn is needed to maintain an appropriate level of service for the intersection.

(IV) Right turn deceleration and acceleration lanes are generally not required on roadways with three or more travel lanes in the direction of the right turn.

(V) A left turn acceleration lane may be required if it will be a benefit to the safety and operation of the roadway.

(VI) A left turn acceleration lane is generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(E) Any of the following apply for an access to an access category 6, 7, 8, or 9 highway

(I) A left turn lane with storage length plus taper is required for any access with a projected peak hour left ingress turning volume greater than 25 vehicles per hour. If the posted speed is greater than 40 mph, a deceleration lane and taper is required for any access with a projected peak hour left ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the deceleration length.

(II) A right turn lane with storage length plus taper is required for any access with a projected peak hour right ingress turning volume greater than 50 vehicles per hour. If the posted speed is greater than 40 mph, a right turn deceleration lane and taper is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the deceleration length.

(F) The following apply for an access to an access category 10 highway:

(I) Exclusive turning lanes are required for all intersections. At a minimum all street accesses must provide an exclusive right turn lane with a minimum length of 250 feet, exclusive of tapers. Longer storage lengths may be necessary based on traffic analysis. Left turn lane dimensions to be defined through traffic analysis. Taper and deceleration lengths to meet current Department standards for posted speeds.

(ii) For specifically identified and documented safety and operation reasons, a turn acceleration or deceleration lane may also be required based on any of the following location factors:

(A) Volume of commercial trucks.

(B) Influence of nearby access.

(C) Highway speed and traffic density access volume.

(D) Existing highway auxiliary lanes close to the access.

(E) Nearby traffic control devices.

(F) Available stopping sight distance.

(G) Topographic and highway design factors.

(iii) For access locations with high percentage of truck use, the Department may require corresponding auxiliary lanes be built to full length and width and the transition taper length extend beyond the full length.

R930-6-8. Access Application Procedures and Requirements.

(1) General.

(a) Current standards. Applicant must use the most recent editions of engineering and state standards and best practices,

including but not limited to those cited in this rule.

(b) Compliance responsibility. It is the responsibility of the applicant to demonstrate the application meets the requirements of this rule. Requirements for grant of access refer to the applicant's responsibility to obtain a grant of access approval from the Department before being granted access to a state highway.

(c) Approvals and environmental compliance. Applicants must comply with all Federal, State, and local authority approvals and laws, including environmental laws before the Department can grant a permit.

(d) Site plan. A site plan approval by a local authority does not entitle the applicant to access a state highway. Grant of access from the Department does not imply endorsement or approval of the submitted site plan.

(e) Multiple accesses. A grant of access application may cover multiple access connections serving a site.

(f) Review periods. Failure of the Department to comply with the review periods defined in this rule shall not preclude the Department from approving or denying any application.

(g) Encroachment permit. Grant of access approval does not allow the applicant to construct the access. An encroachment permit must be obtained prior to any construction in the state highway right-of-way.

(h) Movement restrictions. A grant of access does not guarantee a right of full movement access. The Department may, at its own discretion, require access movements to be restricted.

(2) Conditions requiring grant of access.

(a) Access changes. A grant of access is required whenever a new driveway, other curb cut, or local street connection is sought on a state highway. This applies to proposals to construct a new vehicular access, modify or relocate an existing access, or to close an access on the state highway right-of-way.

(b) Change in land use type and intensity. A grant of access is required when there is a change in land use or a change in the land use intensity of an existing access.

(i) Change of land use. A change in land use includes any land use change that requires a change in zoning, site plan, or conditional use approval by the local authority.

(ii) Change of intensity of land use. A change of intensity of land use is considered to have occurred when an existing land use intensifies as described below. The applicant must use current ITE Trip Generation procedures or other Department accepted methodology to identify this change. A level of change requiring a grant of access is a trip generation that exceeds 100 peak hour trips or 500 daily trips or a change in trip generation of 20% or greater relative to existing conditions. If the property is vacant for more than twelve months, the trip generation for that property is considered zero. A grant of access is also required if trip generation change causes a change in the Access Application Level.

(c) Modification or improvement by local authorities. A grant of access is required for new or modified public access to the state highway (such as county roads and municipal streets).

(i) Access to subdivisions and other developments must be processed in the same manner as a private access and applied for pursuant to this rule, until the access is constructed, completed, and accepted as a public access and public way by the local authority.

(ii) The local authority shall be considered the applicant for requests submitted by local authorities for a new or modified public access. A private development may not apply for a private driveway with the local jurisdiction as the applicant.

(iii) Where a private development accessing the roadway of a local authority necessitates access improvements and where the private access shall become and operate as a local roadway connecting to a state highway, the applicant may either be the

local jurisdiction, the developer, or a combination, at the discretion of the local authority. The corresponding application must identify the intended connection on the local jurisdiction transportation master plan

(iv) Appropriate requests submitted by local authorities shall be administered by the Department by one of the following:

(A) As provided in this rule for any applicant (including non-public applicants);

(B) By special written agreement; or

(C) By contract between the Department and the local authority.

(d) Transfer of Additional Right-of-Way and Improvements. The increased intensity of traffic associated with a proposed access may require the transferring of new state highway real property and highway improvements to handle the traffic associated with the proposed development. The Department may require the applicant to transfer real property, improvements and highway appurtenances when an essential link exists between a legitimate governmental interest and the transfer of the mitigation requirements and the mitigation requirements are roughly proportionate to the impact of the proposed development. In some instances where the transfer of real property is not feasible, the Department may require the applicant to pay for the mitigation of the development impacts to the highway. Additional right-of-way necessary for the state highway improvements, including but not limited to, travel lanes, turn lanes, and auxiliary lanes, are to be conveyed without cost to the Department by dedication or by a warranty deed in a form acceptable to the Department. The Department may accept a perpetual easement for facilities or improvements located outside of the highway right-of-way. If the applicant transfers the property by warranty deed, all rights, title and interests are conveyed to the Department. The applicant shall provide a title policy for the real property to be transferred to the Department. The title policy shall only contain exceptions approved by the Department. If the property is being dedicated through a plat, the property shall not have any encumbrances that are not approved by the Department. The Department may refuse to accept the transfer of real property if the property has unacceptable encumbrances, contains hazardous substances or other conditions of the property. The real property must be in compliance with all applicable state and federal statutes, regulations and rules.

(e) Temporary grant of access. A temporary grant of access is required for any temporary driveway or connection to a state highway. A temporary driveway or connection may be granted to accommodate actions associated with site construction or development. The term of the temporary grant of access shall be noted on the permit.

(3) Pre-application coordination.

(a) Department primary contact. The Region permits officer or other designated employee of the Department shall be the primary contact for the applicant. Direct inquiries regarding an application or review must be directed to this person.

(b) Local agency coordination. To apply for a grant of access, it is recommended that applicants work closely with the local authority's land use approval division and the appropriate Department Region permitting office.

(c) Pre-application meeting. Prior to submitting an application, applicant must contact the appropriate Department Region permitting office to schedule a pre-application meeting. A pre-application meeting provides Department personnel and local authorities an early opportunity to examine the feasibility of the access proposal with the applicant and to consider whether it is permissible under the Department's standards, the requirements of this rule and requirements of locally adopted access plans. The applicant is advised to consult with the Department during the pre-application meeting to determine the

appropriate access category, access application level, traffic impact study requirements, and other application requirements. An application may be submitted anytime after the pre-application meeting.

(i) Meeting is not binding. The pre-application meeting is not binding to the Department or the applicant. Information presented and findings generated during the pre-application meeting may be documented and confirmed in a written notification. However, any pre-application written notification or communication from the Department shall not be considered binding.

(ii) Number of meetings. For typical access applications, one pre-application meeting shall be provided in regards to a specific access application. A second pre-application meeting may be allowed at the Department's discretion to address complex access situations, or to include other affected jurisdictional partners. Additional meetings shall not be held until after the application has been submitted and the appropriate fee has been rendered.

(4) Application requirements.

(a) State highway access category. The applicant must identify and note the appropriate access category assignment for the application. Upon submittal of the application, the Department shall verify the access category assignment. The Department shall make the final determination on the appropriate access category assignment.

(b) Access type. The applicant must note on the application the type of access requested. Access types are defined based on the applicant's property land use and include agricultural, residential, industrial or commercial accesses.

(c) Connection service type. The applicant must note on the application the type of physical connection requested. The connection may serve either a private or public street or private or public driveway connection.

(d) Limited-access and no-access lines. The Applicant must identify any Limited-Access and No-Access lines adjoining the property. The Department makes final determination whether an established line of Limited-Access or No-Access exist in the area in which access is sought.

(e) Permit type. The applicant must identify the type of access permit requested for the site. Permit types include grant of access, temporary grant of access, and encroachment. Procedures and requirements for the encroachment permit are included in Subsection R930-6-8(8) of this rule. The application process for a grant of access and temporary grant of access are the same. A temporary grant of access may be requested alone or in conjunction with a grant of access for a site.

(f) Access application level. The applicant must identify the level of application required for the site. The level of application required is based on the size and magnitude of the project being proposed by the applicant. The application levels define specific threshold elements related to required applicant site plan elements, permitting process, permitting schedule, applicant fees, traffic impact study requirements, and other permit related issues. The applicant must declare all property within the application area to which they hold interest, including, but not limited to, property to be developed. The application levels are based on anticipated changes to state highway facilities and site-generated traffic volumes for daily (ADT) or peak hour time periods. Higher application levels are required when the construction of the proposed access would require significant modifications to elements of a state highway. The Department reserves the right to determine at its own discretion which modifications are considered minor or significant. Generally, the Department will consider modifications to traffic signals, pedestrian ramps, and sidewalks to be minor modifications. For convenience, application level thresholds are also presented in terms of standalone land use

intensity. Land use intensities are based on published ITE Trip Generation rates. The Department may require the applicant to provide more precise trip generation estimates to determine the appropriate access application level for mixed land use or complex developments.

(i) Application level I thresholds. Applicant shall meet the requirements of application level I if the projected site generated traffic is less than 100 ADT and there are no proposed modifications to traffic signals or elements of the roadway. Stand alone land use intensities corresponding to application level I site generated traffic thresholds include the following:

- (A) Single Family: < 10 units.
- (B) Apartment: < 15 units.
- (C) Lodging: < 11 occupied rooms.
- (D) General Office: < 9,000 square feet.
- (E) Retail: < 2,500 square feet.

(ii) Application level II thresholds. Applicant shall meet the requirements of application level II if the projected site generated traffic between 100 and 3,000 ADT or less than 500 peak hour vehicle trips and there are minor modifications to traffic signals or elements of the roadway. Standalone land use intensities corresponding to application level II site generated traffic thresholds include the following:

- (A) Single Family: 10 to 315 units.
- (B) Apartment: 15 to 450 units.
- (C) Lodging: 11 to 330 occupied rooms.
- (D) General Office: 9,000 to 270,000 square feet.
- (E) Retail: 2,500 to 70,000 square feet.
- (F) Gas Station: < 18 fueling positions.
- (G) Fast Food: < 6,000 square feet.
- (H) Restaurant: < 26,000 square feet.

(iii) Application level III thresholds. Applicant shall meet the requirements of application level III if the projected site generated traffic between 3,000 and 10,000 ADT or between 500 to 1,200 peak hour vehicle trips or there is a proposed installation or, in the determination of the Department, significant modification of one or more traffic signals or elements of the roadway, regardless of project size. Standalone land use intensities corresponding to application level III site generated traffic thresholds include the following:

- (A) Single Family: 316 to 1,000 units.
- (B) Apartment: 451 to 1,500 units.
- (C) Lodging: 331 to 1,100 occupied rooms.
- (D) General Office: 270,001 to 900,000 square feet.
- (E) Retail: 70,001 to 230,000 square feet.
- (F) Fast Food: 6,000 to 20,000 square feet.

(iv) Application level IV thresholds. Applicant shall meet the requirements of application level IV if the projected site generated traffic greater than 10,000 ADT or there is a proposed installation or, in the determination of the Department, significant modification of two or more traffic signals, addition of travel lanes to the state highway or proposed modification of freeway interchange, regardless of project size. Standalone land use intensities corresponding to application level IV site generated traffic thresholds include the following:

- (A) Single Family: > 1,000 units.
- (B) Apartment: > 1,500 units.
- (C) Lodging: > 1,100 occupied rooms.
- (D) General Office: > 900,000 square feet.
- (E) Retail: > 230,000 square feet.

(g) Reasonable alternate access. The applicant shall identify any and all reasonable alternate access for the subject site.

(i) Determination of reasonable access. Reasonable local access shall be determined in consultation with the appropriate local authority and as defined in this rule.

(ii) Limited-access and no-access lines. When applications are made for properties adjoining a state highway with a limited-access or no-access line, reasonable alternate

access shall be afforded through the use of other existing or planned facilities in consultation with the appropriate local authorities and their transportation master plan.

(h) Traffic impact study (TIS). The applicant is responsible for performance and delivery of an acceptable traffic impact study. The TIS shall be completed by an individual or entity demonstrating capability to analyze and report mobility, traffic engineering elements, and design elements as necessary for the application study area and site design.

(i) Conditions requiring a TIS. A TIS is required for all grant of access applications. A TIS is required for modifications to existing state highway traffic control equipment. A TIS may also be required for encroachment permit applications. For access application levels I and II, the Department may, at its own discretion, waive requirements for a TIS. Applicants wishing to waive the requirement for a TIS must submit a written request, including justification for waiving the requirement for a TIS. Requirements for a TIS for access application levels III and IV shall not be waived.

(ii) Purpose of the TIS. The purpose of the TIS is to identify system and immediate area impacts associated with the proposed connection(s). A traffic study is necessary to identify, review, and make recommendations for mitigation of the potential impacts a development may have on the roadway system.

(iii) Study area of the TIS. The TIS must include any proposed or existing access or connection within an area identified by the Department. Determination of the extent of the TIS study area is at the discretion of the Department. The study area may be defined by, but not limited to, an identified safety problem, accident review, congested locations, or as a result of a change in land use or access in accordance with an application. The study area may also be defined by the size and intensity of the development and surrounding development and by a travel time boundary, area of influence, parcel boundaries, physical boundaries, or political boundaries.

(iv) Scope of the TIS. The TIS must, at a minimum, incorporate traffic engineering principles and the standards as presented in this rule. Additional requirements and investigation not specifically identified in this rule may be imposed upon the applicant as necessary. In general, the TIS scope must achieve the following:

(A) Present project overview of the proposed development including information such as site location and proposed access point(s), phased and full development trip generation, connection point design elements, adjacent and relevant development, existing and future traffic volumes, assessment of the system impacts, and mitigation measures as appropriate.

(B) Document whether or not the access request can meet the standards and requirements of this rule and other applicable regulations.

(C) Analyze appropriate location, spacing, and design of the access connection(s) necessary to mitigate the traffic.

(D) Analyze operational impacts on the highway and permissible under the highway's assigned access category and in accordance with applicable requirements and standards of this rule.

(E) Recommend the need for any improvements to the adjacent and nearby roadway system to maintain a satisfactory level of service and safety and to protect the function of the highway system while providing appropriate and necessary access to the proposed development.

(F) Assure that the internal traffic circulation of the proposed development is designed to provide safe and efficient access to and from the adjacent and nearby roadway system consistent with the purpose of this rule.

(G) Analyze and recommend the means for land uses to minimize their external transportation costs to the traveling public through traffic improvements necessitated by that

development as well as making the fullest use of alternative travel modes.

(5) Application submittal.

(a) Application and attachments. Applicants must submit to the appropriate Department Region permitting office, the complete application including any required attachments reasonably necessary to review and assess the application and complete the application review process. Required attachments may include detailed site plans, maps, traffic studies, surveys, deeds, agreements, documents, and other data to demonstrate compliance with this rule. Maps and site plans to be submitted may include, but are not limited to utilities in the vicinity of the access and utilities to be moved. The Department shall determine the scope of the attachments necessary for application submission based on the identified access application level.

(b) Site or development overview. Applications must provide a description of the site/development including site plan and overview materials such as preliminary maps, plans, and documents to illustrate the site, the size and type of proposed land use, estimated traffic volumes, vehicle types generated by the site, adjacent public roads and highways, adjacent properties, and any existing or available access points. The application must include all the information and materials requested at the pre-application meeting.

(c) Document ownership. All submitted applications become the property of the Department. The Department may not request items without relevance to the approval or denial of the application. If the applicant is other than the fee surface rights owner of the property to be served, the applicant shall include sufficient evidence of concurrence or knowledge in the application by the fee surface rights owner and proof of development rights (i.e. option to buy, federal use permit). The applicant shall give complete names, addresses, and telephone numbers of the property owner(s), the applicant(s), and primary contact person, on the application along with the expected dates of construction and commencement of use of the access.

(d) Corporate or agency applicant. When the owner or applicant is a company, corporation, government agency or other entity, the application must provide the office, title, and the name of the responsible officer. A corporation must be licensed to do business in the State of Utah.

(e) Misrepresentation. Intentional misrepresentation of existing or future conditions or of information requested for the application for the purposes of getting a more favorable determination is sufficient grounds for the rejection or denial of the application or revocation of a granted access and encroachment permit.

(f) Application fees. A fee shall be assessed for the review and assessment of the grant of access and temporary grant of access application.

(i) The Department shall establish and collect a reasonable schedule of fees for the review and administration of grants of access and construction permits pursuant to this rule. The permit fee schedule shall not exceed the cost of the review and administration of the application. The appropriate application fees may be found in the Department schedule of fees.

(ii) The application review may not proceed until payment has been received by the Department. The application shall not be considered submitted until payment has been received.

(6) Application review and approval.

(a) Completeness review. The Department shall review the application to verify that the required information has been submitted. If the Department determines an application to be incomplete, the applicant shall be notified in writing including by, but not limited to, email notification. The notice shall include any outstanding items, issues, or concerns given the available information. Upon receipt of the Department's letter requesting more information, the applicant shall provide additional data and information as appropriate, or withdraw the

application. The applicant is required to submit the necessary information as determined by the Department to complete the application within six months from the date the application was submitted. Otherwise the application is considered withdrawn.

(b) Completeness review period. The typical completeness review period is ten working days. This review period begins when the applicant submits a completed application packet with all required components for approval and has rendered the appropriate nonrefundable application fee. Once additional requested information is submitted, or resubmitted, by the applicant the ten-day completeness review period starts over.

(c) Application review. The Department shall begin processing the application when the application has been identified as complete. The Department shall use this rule and any other applicable state and federal laws, policies, or guidelines to evaluate and act on the application. If during the review of the application it is found that additional information for review is necessary, the Department shall address in writing to the applicant the need for additional information. Written notification may include, but not be limited to, email notification. The application review period may be lengthened or begin again when the applicant submits significant additional information.

(d) Signatures. When this rule or related official forms require the signature of the permittee(s) or applicant, the signatures shall be that of the specific individual or if a corporation or partnership or other entity, the duly authorized officer or agent of the corporation or partnership or other entity. The applicant shall include the name of the corporation, partnership, or entity with the signature.

(e) Application review period. The typical application review period is forty-five working days.

(f) Action by the Department. As determined by the standards of this rule, the Department may grant the access as proposed, require layout, design and location modifications as it considers appropriate, restrict one or more turning movements as necessary to reduce traffic and safety impacts, or deny the access.

(i) The application shall be denied if the proposed access cannot meet the requirements or standards of this rule including consideration of appropriate variance criteria or other applicable laws. If the Department denies the application, the Department shall provide a written explanation of the decision.

(ii) Upon access approval, the Department shall prepare a grant of access document and transmit it to the applicant.

(iii) The issue date of the grant of access shall be the date the Department representative signed the grant of access.

(g) Grant of access expiration. A grant of access shall expire if the access construction is not completed within twelve months of the permit issue date or before the expiration of any authorized extension. When the permittee is unable to complete construction within twelve months after the permit issue date, the permittee may request a six-month extension from the Department. No more than one six-month extension may be granted under any circumstances. The applicant must submit request for an extension in writing to the Department before the permit expires. The request shall state why the extension is necessary, when construction is anticipated, and include a copy of the grant of access approval. Extension approvals shall be in writing and may include, but not be limited to, email documentation. To reestablish an access approval that has expired, the applicant shall begin the application procedures again. The Department shall maintain a copy of the grant of access issued for as long as the granted access is in existence pursuant to the grant of access.

(7) Additional requirements for limited control lines.

(a) Applicable procedures and standards. The following procedures and standards apply to requests for modification of a Limited Access or No Access line.

(i) No-access lines. A modification of a no-access line is only allowed to create a general or local street connection as proposed by the local authority where no other reasonable alternate access to abutting property can be provided.

(ii) Limited-access lines. Only in cases where, in the determination of the Department, significant public benefit is expected may new access openings be granted through established Limited-Access lines. A request for a new or modified access opening shall be submitted by the property owner or local authority in writing to the Department and must clearly identify the proposed public benefit resulting from for the access opening.

(iii) If there are other justifications for the access opening that are not solely for the public's benefit, the applicant shall identify those justifications and any public interests served by those justifications.

(iv) Upon review of the application, the Department, in its sole discretion, shall determine whether there is a sufficient public benefit to justify allowing the proposed new or modified access opening.

(b) Extended review period. While most requests for a new access opening may be reviewed within 45 days, additional review time may be needed. There is no fixed amount of time that the Department may take to review a request to create or modify an access opening. Complex or incomplete requests may take longer than 45 days to review and approve or deny.

(c) Corridor agreements. Requests to modify a limited-access line may require the applicant to produce or provide analysis for a signal control plan or access corridor control plan. Requests to modify a no-access Line must include a signal control plan agreement or access corridor control plan agreement.

(i) If no such agreement exists, the applicant must complete an analysis that the Department may use to create or modify a signal control plan or access corridor control plan.

(ii) The Department, local authorities and, if one exists, the Metropolitan Planning Organization, must ratify signal control plan and access corridor control agreements.

(iii) Signal control plans and access corridor control plans must be consistent with the local authority's transportation master plan. Such plans must also conform to the Metropolitan Planning Organization's plans and designs.

(d) Approval or denial decision. Upon recommendation of Department staff, the Department Deputy Director or designee shall approve or deny the grant of access request for changes to limited-access lines or no-access lines and send notice of the decision to the applicant. FHWA review is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(e) Fees and reimbursements. The Department considers access control rights an asset that is purchased and can be sold. Any approved changes to limited-access or no-access lines requires reimbursement to the Department of its fair market value. If the access opening is approved and is to serve private property, the property owner shall pay the Department for property appreciation, resulting from the Department's relinquishment of the access. The appreciation of the private property involved shall be determined by an independent licensed appraiser as listed within the Department's certified pool of approved appraisers. The property appraisal must show the property valuation before the access is created or modified (the before condition) and after the access is created or modified (the after condition). The difference in the appraised property valuation in the before condition, when compared with the appraised property valuation in the after condition, determines the current fair market value for the access, which shall be the price of the access. Because appraised access valuation costs are a major consideration for any development-related initiative,

it is considered a best practice for the applicant to obtain the appraisal at the beginning of the grant of access application process. Upon approval to modify a limited-access line or no-access line, the applicant must pay the fair market value of the access right acquired from the Department. The property owner shall also pay all costs for construction of gates, approaches and any other incidental construction costs involved.

(f) Recorded deed. The applicant shall execute and record the grant of access on the appropriate property deed indicating the access opening. The applicant shall revise all maps and plans. This procedure applies to roads constructed with federal-aid funds, which will remain on a federal-aid system and be transferred to local authorities.

(g) Review considerations. Department and, if applicable, FHWA staff shall investigate safety and other operational features and impacts of the request review and comment on the following:

(i) Finding or demonstration of no reasonable alternate access and,

(ii) Providing the access connection to a local street system or an identified local street system on which:

(A) The opening is identified on the local master street plan,

(B) The opening provides continuity to other local streets,

(C) The opening provides reasonable alternate access via the local system,

(D) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(iii) Identifying the access on an agreed local signal control or access corridor control plan on which:

(A) The opening provides continuity to other local streets,

(B) The opening provides reasonable alternate access via the local system, and

(C) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(h) Revision of access openings. If a property owner desires to change the location, use or size of an access opening, after execution of the deed, a new application must be submitted to the Department giving the location of the desired change and its justification. Changes shall comply with the standards and requirements of this rule.

(i) The Department shall evaluate the application to determine if the change in location, use or size will cause any adverse safety or other traffic operational effects and submit a report with recommendations to the Deputy Director.

(ii) If the change is approved by the Deputy Director and by FHWA for federal-aid roads, new deeds shall be prepared and executed and all maps corrected.

(iii) The property owner shall pay for all costs involved in closing or modifying an existing access opening.

(iv) Requests for modification of access control shall be forwarded with recommendations to the Department by the local authority.

(8) Encroachment permit requirements.

(a) General. No work on the state highway right-of-way may begin until an approved encroachment permit is issued by the Department and the permittee is authorized in writing to proceed. Written authorization may include, but not be limited to, email.

(i) Prior to any construction, the applicant must receive approval for an encroachment permit (related to the grant of access approval) with appropriate traffic control, construction plans, bonds, and insurance requirements. The applicant must attach a copy of the grant of access document to the encroachment permit application.

(ii) In addition to procedures and requirements defined herein, all of the application procedures defined for grant of access application within this rule, including review periods, apply to applications for an encroachment permit.

(iii) All construction materials, techniques, and processes shall be in conformance with the terms, conditions, and limitations of the permit and consistent with Department requirements and standard specifications.

(b) Permit fees. A fee shall be assessed for approved encroachment permits. The Department may not authorize the permittee to begin work on the state highway until the permit fee is paid.

(c) Notice of construction and work completion time-frames. The permittee shall notify the Department at least two working days prior to any construction within state highway right-of-way. The permittee shall execute access construction in an expeditious and safe manner. Access construction must be completed within ninety days from initiation of construction within the highway right-of-way.

(d) Phased construction of access. Upon request, the phasing of the installation of access design requirements may be allowed if the average use of the access at any time does not exceed the constructed design and the Department or local authority is provided monetary or legal guarantees that access approval terms, conditions and limitations shall be met prior to any use of the access exceeding the existing design of the access.

(i) The following items may be used to provide the monetary or legal guarantees referenced above:

(A) Posting a bond.

(B) Irrevocable letter of credit.

(C) Certificates of deposit.

(D) Inclusion in zoning ordinance.

(E) Inclusion in subdivision plats or land use permit requirements.

(F) Inclusion in the deeds to the properties involved.

(G) Any other techniques as approved and accepted by the Department.

(ii) All such arrangements shall be included as terms and conditions of the permit.

(iii) The local authority and Department may record notices in the county records of such agreements to inform future property owners of potential liabilities and responsibilities.

(iv) If the project is to be phased over time, the schedule, location and other details of each phase must be provided as part of the application for an encroachment permit.

(e) Traffic control. The permittee shall provide appropriate construction traffic control devices at all times during access construction in conformance with the MUTCD and Department standard drawings for traffic control.

(i) The applicant shall provide traffic control plans detailing the location, duration, design, use, and traffic controls of the access.

(ii) Construction may not commence until the traffic control plan has been approved by the Department.

(iii) Traffic control plans must be sealed (stamped) by a Professional Engineer licensed in the State of Utah or, when determined appropriate by the Department, a certified Traffic Control Supervisor.

(iv) Traffic control plans must conform to the current MUTCD and Department requirements and standards, including Department Traffic Control Standards and Specifications.

(v) Traffic control plans must address the following:

(A) Construction phasing.

(B) Lane/shoulder closures.

(C) Tapers and device spacing.

(D) Sign boards, arrow boards, and variable message signs.

(E) Temporary modifications to traffic signals.

(F) Time restrictions and work schedule.

(G) Lane shifts.

(H) Flagging operations.

(vi) Traffic control plans may be revised as necessary with Department concurrence.

(vii) The Department may establish a fee schedule to charge an hourly fee or daily fees for the closure of any travel lanes necessary for the construction of a private access. The purpose of the fee is to encourage the quick completion of all work that reduces highway capacity and safety or interferes with the through movement of traffic.

(f) Professional evaluation. For any permit involving changes to state highways or structures, the Department may require the permittee to hire a Professional Engineer licensed in the State of Utah to inspect the access and state highway and structures carefully and to affirm to the best of their knowledge and belief that the construction is in compliance with the permit, Department specifications, materials construction monitoring and testing, and to report any item that may not be in compliance or cannot be determined to be in compliance and the nature and scope of the item relative to compliance. The Department may require testing of materials at the permittee's expense. When so required by the Department or as specified on the permit, test results must be provided to the Department.

(g) Construction operations. Installation of highway and access elements must be in compliance with all Department requirements for grant of access and encroachment permits, the Department standard drawings and the state or local health ordinance specifications for culverts, catch basins, drainage channels, and other drainage structures.

(i) Applicant must ensure adequate sight distance for traffic operation and comply with the requirements of the Department approved traffic control plans during all construction operations.

(ii) Applicant must provide proper drainage, suitable slopes for maintenance operations, and good appearance during construction operations.

(iii) Trees, shrubs, ground cover, or other landscape features may need to be removed, replaced, or suitably adjusted.

(iv) Applicant must free the construction buffer area, as defined by Department traffic control standards from any encroachment that will hinder traffic. Applicant must grade or landscape the buffer area between driveways to prevent use by vehicles while protecting clear sight across the area.

(9) Withdrawn applications.

(a) No payment. A permit shall be deemed withdrawn if the Department has not received the signed copy of the permit or fee payment, if any, from the applicant within forty-five days of the date of approval transmittal.

(b) Non-responsive applicant. The application shall be deemed withdrawn if the applicant fails to provide requested documents, plan alterations, or similar application components as required by the Department within sixty days of such a request. The clock for a non-responsive applicant starts anytime the Department provides the applicant a written request for additional information, plan alterations, or other application components deemed necessary to effect further review of the application. Written requests for additional information may include, but are not limited to, email. Prior to deeming a nonresponsive application withdrawn, the Department shall make a minimum of three direct contact attempts in approximately two week intervals to advise an applicant that their access approval is in jeopardy of being terminated. Contact attempts may be made in person, via email, written letter, or phone call.

(c) Resubmission. Once an application is deemed withdrawn, the applicant must:

(i) Submit a new application.

(ii) Include a complete re-submittal of the current plans and studies.

(iii) Pay a new application fee.

R930-6-9. Variances and Appeals.

(1) General.

(a) This section describes procedures and requirements for applicants to request a variance from the standards and requirements of this rule. This section also describes the procedures to appeal the Department's decision to deny a grant of access or encroachment permit request.

(b) Variations from provisions of this rule may be allowed if they do not violate state and federal statutes, laws, or regulations and the Department has determined there is no reasonable alternate access and the access and use of the state highway right-of-way will not compromise the safety and operation of the of the state highway.

(2) Variance requests.

(a) Application submittal. A variance may be considered for any design standard of this rule that is not applicable or feasible given the proposed physical and operational characteristics of the site. Applicants seeking a variance from the standards and requirements of this rule must submit a thoroughly detailed variance request as an attachment to the grant of access or encroachment permit application. The Department may allow a request for a variance as a supplement to a previously submitted application if the Department determines that it is in the public interest to do so.

(i) General requirements. The applicant is responsible to demonstrate that the variance request meets minimum acceptable engineering, operation, and safety standards is not detrimental to the public health, welfare, and safety and is reasonably necessary for the convenience and welfare of the public.

(A) The request for a variance must specify, in writing, why the variance is appropriate and necessary. The request must include documentation of conditions with and without the variance and documentation showing that the applicant has considered all practical mitigation alternatives and demonstrate that better alternatives in terms of highway operations are not feasible or do not exist. A variance from the spacing standards shall not be considered unless the subject property and proposed access points cannot achieve the minimum spacing standards under the appropriate access category and no other reasonable alternate access can be afforded the site.

(B) The applicant must show that the variance request results from the application of the standards or requirements of this rule and is not self-created or self-imposed (such as by the applicant acting with or without knowledge of the applicable standard or requirement).

(ii) Existing non-conforming access. Non-conforming modifications to an existing highway access that is either in use or can demonstrate historical use and does not comply with the provisions of this rule, may be allowed when the applicant demonstrates to the Department that the proposed access point(s) modifications will improve the operation and safety of the highway. Consolidation of access points is considered to benefit the highway operations and is encouraged. Where there are multiple accesses serving a site, the Department shall consider a 50 percent reduction (rounded up for odd numbers) to demonstrate an improvement to operations of the highway.

(iii) Limited-access and no-access facilities. Variance requests to modify a limited-access line or no-access line shall include detailed reports of appraisals, costs and justification for the variance. A request to modify a limited-access line or no-access line shall be treated as a request for variance. The Department may consider variances from the provisions of this rule for limited-access facilities when a careful appraisal reveals extensive damage, or if needed frontage roads would involve excessive right-of-way costs or construction costs.

(b) Department review considerations. The Department shall not grant variances that, in the Department's determination, pose hazards to public mobility, health, safety, and welfare. The

Department shall not grant variances for procedural requirements. The Department shall review the variance request for consistency with the purposes of this rule. The Department shall consider the following specific factors in determining that the granting of a variance will not negatively impact the current and proposed operation of the highway:

(i) The applicant has considered all other feasible alternatives to provide reasonable alternate access to the property or development and can demonstrate that better alternatives in terms of highway operations are not feasible or do not exist.

(ii) The applicant has considered access through a shared use driveway or access point with an adjacent land use and such a shared use access is not feasible.

(iii) The applicant is providing on-site or off-site traffic improvements that might offset the negative impacts of granting an access that does not meet the provisions of this rule.

(iv) The applicant has considered and demonstrated trip reduction strategies that allow the access to properly function without creating a negative impact to the highway.

(v) The applicant has provided traffic engineering or other studies to determine that the access will not degrade the efficient flow of traffic on the highway in terms of safety, capacity, travel speed, and other functional features of the highway.

(c) Department review period. The review periods defined within this rule for grant of access applications shall apply to request for variance applications.

(d) Department documentation. The Department shall include in its files documentation of reasons for approving or denying a variance request.

(e) Limitations and conditions of variance approval. An approved grant of access or encroachment permit may stipulate conditions and terms for the expiration of the permit when the necessity for the variance no longer exists. It may also require the permittee to improve, modify, eliminate, or correct the condition responsible for the variance when it is evident that the justification for the variance is no longer valid. Such stipulations and requirements shall be stated in the approved permit.

(3) Appeals.

(a) Applicant appeal rights. The applicant may appeal the Department's decision only if the Department has denied a grant of access, encroachment permit or variance request. Any appeal of Department action must comply with this rule, R907-1, and Utah Code Title 63G Chapter 4, Administrative Procedures Act. The Assistant Attorney General shall assist the Department Region Director during the hearing and drafting of the final order.

R930-6-10. Conditions of Right-of-Way Use.

(1) General.

(a) This section describes conditions that apply to all connections, encroachments, and uses of the state highway right-of-way. The conditions and requirements of this section are in addition to other conditions, limitations, and requirements of this rule and the grant of access and encroachment permit.

(2) Right-of-way encroachment requirements.

(a) Prohibited right-of-way uses. The state highway right-of-way shall not be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of advertising, or conducting of private business.

(b) Buildings and structures. The placement of buildings or structures of any type within state highway rights-of-way is not allowed unless authorized by a permit obtained from the Department.

(c) Advertising. Private advertising or business endeavors on federally funded or other state highway rights-of-way are prohibited.

(i) No part of the state highway right-of-way may be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of private advertising or to conduct private business.

(ii) Special advertisement may be allowed within the state highway right-of-way if it will not compromise traffic flow or safety and will be in the public interest. A permitted encroachment to occupy the right-of-way for such advertising may be issued, for a time not to exceed one week. All such special advertisement shall not conflict with any provisions of Utah's Outdoor Advertising Act.

(d) Mailboxes. Installation of new mailboxes must be approved by the appropriate Department Region Director or an authorized representative. All new mailboxes placed within a state highway right-of-way must be constructed in conformance with Department standard drawings GW-7 and GW-8. Existing mailboxes located within the state highway right-of-way must be maintained or corrected to conform to the Department standards. Owners of mailboxes deemed nonconforming shall be notified in writing by the Department Region Director or an authorized representative. Within thirty days of receipt of notice, the owner must, at its own expense, reconstruct the mailbox or otherwise correct any deficiencies to conform to current safety standards and regulations of the Department. The Department may contact the postmaster and stop delivery of mail until compliance is achieved. Mailboxes may be deemed nonconforming for the following:

(i) Mailboxes that constitute a traffic hazard are considered nonconforming.

(ii) Mailboxes and supports that are in poor repair and detract from the appearance of the highway may be considered nonconforming.

(iii) Any part of a mailbox that is over 50 inches high is considered nonconforming.

(iv) Any part of a mailbox that is located within the shoulder is considered nonconforming.

(v) Mailbox supports that exceed any of the following criteria are considered nonconforming:

(A) Wood support with over 16 square inches cross-sectional area.

(B) Metal support with greatest dimension over 3.5 inches.

(C) Metal pipe support of over 2 inches in diameter.

(D) Other metal supports deemed to be a hazard by the appropriate Department Region Director or an authorized representative.

(e) Special limitations. All encroachments on state highway, including permits issued for special encroachment, are subject to the following conditions and limitations:

(i) Red or reddish colored lights. Red or reddish colored decorations or advertising lights are not permitted within the right-of-way.

(ii) Clearance over highway surface. Any decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item placed within the right-of-way must have a minimum clearance of 20 feet.

(iii) Utility poles. Attach no decorations, displays, flags, banners, colored lights, handbills, structures or other advertising or decoration items may be attached to a utility facility without written permission of the appropriate entity or owner.

(iv) Highway control obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may block the normal view of any official highway sign or other traffic control device and signals.

(v) Shapes similar to highway control devices. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may be of such shape, size, color or design similar to any Department traffic control sign, signal, marking or device.

(vi) Attachments to traffic signals. No attachments of any type may be allowed on traffic signals.

(vii) Sight obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may obstruct the normal view of traffic nor may obstruct, impede or endanger the normal flow of traffic. In accordance with Utah Code Section 41-6a-216 "Removal of plants or other obstructions impairing view, Notice to owner - Penalty," owners of real property next to state highway rights-of-way shall be ordered to remove any trees, plants, shrubs, or any other obstructions that obstruct the view of motorists and thereby constitute a hazard.

(3) Department changes to existing access.

(a) The Department may, when necessary for the improved safety and operation of the roadway, rebuild, modify, remove, or relocate any access or redesign the highway including any auxiliary lane and allowable turning movement.

(i) The Department shall notify the permittee or current property owner of the change.

(ii) Changes in roadway median design that may affect turning movements normally does not require a hearing because a grant of access approval confers no private rights to the permittee regarding the control of highway design or traffic operation even when that design affects access turning movements.

(iii) In order to eliminate public road access, a study shall be made in conjunction with local authorities for a feasibility of dead ending or rerouting of intersecting roads.

(4) Permittee requirements and limitations.

(a) Grant of access limitations. The granting of an access approval conveys no rights, title, or interest in state highway rights-of-way to the permittee or property served. A grant of access for direct access to a state highway does not entitle the permittee to control or have any rights or interests in any portion of the design, specifications or operation of the highway or roadway, including those portions of the highway built pursuant to the terms, conditions and limitations of the grant of access.

(b) Completion requirements. Prior to using the access, the permittee is required to complete the construction according to the terms, conditions and limitations of the grant of access and encroachment permit. Department approval is required if the permittee wishes to use the access prior to completion.

(c) Access transferability and maintenance. The permittee, his or her heirs, successors-in-interest, assigns, and occupants of the property serviced by the access is responsible for meeting the terms, conditions and limitations of the permit, including, but not limited to the following maintenance requirements:

(i) Ensuring that the use of the access to the property is not in violation of this rule and terms, conditions and limitations of the permit.

(ii) Repairing and maintaining the access beyond the edge of the roadway, including any cattle guard and gate.

(iii) Removing or clearing snow or ice upon the access, including snow or ice deposited on the access in the course of Department snow removal operations.

(iv) Repairing and replacing any access-related features within the right-of-way, including culverts. Any significant repairs, such as culvert replacement, resurfacing, or changes in design or specifications requires authorization from the Department.

(d) Notification of changes. The permittee shall contact the Department if changes are made or will be made in the use of the property which would affect access operation, traffic volume, or vehicle type to determine if a new grant of access and/or modifications to the access approval are required.

(e) Indemnification requirements. Permittees shall, at all times, indemnify and hold harmless the Department, its employees and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance,

repair, operation, or use of an access or other facility.

(f) Insurance, bonding and letter of credit requirements. The permittee is responsible for the maintenance of the construction performed within the state highway right-of-way for a period of three years from the date of beginning work or two years from the end of work, whichever provides the longer period of coverage.

(i) Insurance. Permittee is required to have in force a liability insurance policy, naming the Department as an additional insured in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. Failure to meet this requirement for the life of the permit shall result in permit revocation.

(ii) Bonding. As authorized by Utah Code Subsection 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a performance and warranty or maintenance bond, using the Department's approved bond form, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A performance and warranty bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms, conditions and limitations of previous permits issued as determined by the Department. The amount of the bond is determined by the Department Region Permits Officer based on the scope of work being performed but will not be less than \$10,000.00.

(iii) Proceeds Against Bond. The Department may proceed against the bond to recover all expenses incurred if payment is not received from the permittee within forty-five calendar days of receiving an invoice. Upon discovery of permittee caused damage to the highway or to the right of way, the Department may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to permittee caused damages. Failure by the permittee to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the closure of the access to from the state highway right of way.

(iv) Letter of credit. For small projects, the Department may accept an irrevocable letter of credit as reasonable security in lieu of bonding. A letter of credit shall be issued by a federally insured bank authorized to do business in Utah and shall be placed in the possession of and payable upon demand only to the Department. A letter of credit shall be irrevocable during its terms and shall be automatically renewable, or the applicant shall insure continuous coverage by replacing letters of credit, if necessary, at least thirty days before their expiration date with other acceptable bond types or letters of credit.

(5) Existing interests.

(a) Historical interest. The Department recognizes that pre-existing property interests within the state highway rights-of-way may exist. Proof of a pre-existing property interest within a public right-of-way must be provided to the Department in the form of a duly executed deed, grant or other document establishing the same are required to establish prior right or title of the entity or person. In the absence of such proof, it shall be assumed that the entity or person occupies the right-of-way under permit (i.e., by permission), and enjoys no vested interest in the state highway right-of-way. In those instances when the Department requires an entity or person with a pre-existing property interest to move completely or partially off the right-of-way, the Department shall make appropriate remuneration for the relinquishment of that interest.

(i) The adoption of this rule by the Department does not constitute an acceptance or recognition of pre-existing property interests.

(ii) The Department assumes no liability associated with these interests and uses; either for the safety to users or the traveling public, damage to property, or for the continued use

thereof.

(b) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(c) Permittee improvement of existing access. The property owner or authorized representative served by a lawful access may make physical improvements to the access per the requirements of this rule and only with the written permission of the Department. Denial of the application for improvements does not constitute revocation of the existing access authorization. Denial of an application to enlarge, relocate, or modify an existing lawful access, in no way impairs the permit for or right to the existing access for its legal historical use.

72-7-103
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R930-6-11. Enforcement.

(1) Access violations enforcement.

(a) The Department may install barriers across or remove any access that it determines to be unlawful. Costs incurred by the Department to install barriers or remove access must be reimbursed by the permittee before the access is restored.

(b) When an access is constructed or used in violation of this rule, the Department may suspend an access approval and immediately order closure of the access. Costs incurred by the Department in closing an access shall be reimbursed by the permittee.

(c) When an access is constructed without prior grant of access, the Department may impose a fine or fee. The Department may order immediate closure of the access. The offender shall reimburse costs incurred by the Department in closing an access.

(d) Upon detection of unauthorized modifications to limited-access lines, the Department shall contact the property owner and require the owner to restore the state highway right-of-way, including, but not limited to, any damaged fences.

(e) Highways with limited-access control may be marked by the Department with public property plates on fences at sufficient intervals to clearly indicate to maintenance personnel the limits of access control.

(2) Permit violations enforcement.

(a) Abuse or noncompliance of a grant of access or encroachment permit shall be subject to enforcement through fine and corrective measures.

(b) Failure by the permittee to abide by all permit terms, conditions and limitations is sufficient cause for the Department to initiate action to suspend or revoke the permit and close the access. The Department may suspend the permit for cause if it determines failure to comply with or complete the construction requirements of the permit create a highway safety hazard. The Department may order a halt to any unauthorized use of the access pursuant to statutory and regulatory powers. Reconstruction or improvement of the access may be required when the permittee has failed to meet required specifications of design or materials.

(c) Failure of the permittee to pay the Department for costs related to the Department's installation or relocation of traffic control devices within a reasonable period may be considered grounds for permit suspension that may lead to revocation and access removal.

KEY: access control, permits

March 9, 2013

Notice of Continuation November 14, 2011

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41-6a-1701
72-1-102(11)
72-1-201
72-3-109
72-4-102.5
72-6-117
72-7-102

R940. Transportation Commission, Administration.**R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance.****R940-3-1. Purpose and Authority.**

This rule is enacted under the provisions of Section 72-2-203. The purpose of this rule is to establish procedures and standards for making loans and assistance through the Transportation Infrastructure Loan Fund.

R940-3-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Ann. Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in Utah Code Ann. Section 72-1-201;

(3) "Fund" means the Transportation Infrastructure Loan Fund, which is created in Utah Code Ann. Section 72-2-202;

(4) "Assistance" means infrastructure assistance defined in Utah Code Ann. 72-2-201;

(5) "Loan" means infrastructure loan defined in Utah Code Ann. 72-2-201;

(6) "Transportation project" has the same meaning as defined in Utah Code Ann. 72-2-201;

(7) "Qualified request" means any request submitted by a public entity for assistance or a loan:

(a) that has been received and reviewed by the department;

(b) that has been submitted by the department to the commission for review with a recommendation from the department to accept or reject the request;

(c) for a transportation project that is on the Statewide Transportation Improvement Program;

(8) "Public entity" has the same meaning as defined in Utah Code Ann. 72-2-201.

R940-3-3. Commission Responsibilities.

The commission shall:

(a) receive and review all qualified requests for assistance or loans through the fund;

(b) approve assistance or loans provided by the department through the fund;

(c) approve the terms of assistance or loans, including interest rates and repayment;

(d) prioritize requests for assistance or loans based on:

(i) the availability of monies in the fund;

(ii) the merits of each qualified request as determined by the commission including, but not limited to, the ability to repay the loan, management of the project, the need for the transportation project and the public benefit.

R940-3-4. Conditions for Assistance or Loans.

The commission shall approve or reject qualified requests submitted by the department during a commission meeting held under 72-1-302, including the terms for repayment. Any subsequent amendments or alterations made to the terms for repayment must be approved by the commission. Repayment of loans must be completed no more than 10 years from the time the loan is executed. If a transportation project is funded with federal funds, all federal regulations must be followed.

KEY: infrastructure assistance, Transportation Infrastructure Loan Fund

January 12, 2009

72-2-203

Notice of Continuation December 18, 2013