

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

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

- (i) procedures for obtaining domesticated elk facility licenses,
- (ii) requirements for operating those facilities,
- (iii) standards for disposal/removal of animals within those facilities, and
- (iv) health standards and requirements in such facilities.

R58-20-2. Definitions.

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

- (1) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.
- (2) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.
- (3) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.
- (4) "Hunting Park" means a place where domestic elk are harvested through normal or typical hunting methods.
- (5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.
- (6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.

R58-20-3. Application and Licensing Process.

- (1) Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.
- (2) In addition to the application, a general plot plan should be submitted showing the location of the proposed hunting park in conjunction with roads, town, etc. in the immediate area.
- (3) A facility number shall be assigned to an elk hunting park at the time a completed application is received at the Department of Agriculture and Food building.
- (4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.
- (5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.
- (6) All licenses for hunting parks expire on July 1 in the year following the year of issuance.
- (7) No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant.

R58-20-4. License Renewal.

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

R58-20-5. Facilities.

- (1) Fencing requirements established by Section 4-39-201

of the Utah Code are applicable to both domestic elk farms and hunting parks.

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

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

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

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

R58-20-6. Records.

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

R58-20-7. Genetic Purity.

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

R58-20-8. Acquisition of Elk.

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

R58-20-9. Identification.

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

R58-20-10. Inspections.

- (1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.
- (2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.
- (3) All live domestic elk must be brand inspected prior to entering or leaving the park.
- (4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed hunting park before being released into an area inhabited by other domestic elk.
- (5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting park including those which move from facility to facility within Utah.
- (6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.
- (7) Pursuant to Section 4-39-207, agricultural inspectors

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

R58-20-11. Health Rules.

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

R58-20-12. Meat.

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

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

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

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

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

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

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

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

R58-20-14. Liability.

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

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

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

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

**KEY: inspections
December 19, 2011**

4-39-106

Notice of Continuation January 17, 2014

**R105. Attorney General, Administration.
R105-2. Records Access and Management.
R105-2-1. Purpose.**

This rule provides information about submitting requests and appeals to the Attorney General's Office under the Government Records Access and Management Act.

R105-2-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Information Officer
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
Salt Lake City, Utah 84114

(If by mail)

GRAMA Information Officer
Office of the Attorney General
PO Box 142320
Salt Lake City, Utah 84114-2320

(If by email)

GRAMA Information Officer
grama_coordinator@utah.gov

R105-2-3. Appeals.

Appeals regarding questions of access to records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Appeal
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
SLC UT 84114

(If by mail)

GRAMA Appeal
Office of the Attorney General
PO Box 142320
SLC UT 84114-2320

(If by email)

GRAMA Information Officer
grama_coordinator@utah.gov

R105-2-4. Records of Client Agencies.

Requesters seeking copies of records of client agencies of the Attorney General's Office must make their request directly to the client agency. See 67-5-15(1).

R105-2-5. Record Sharing.

For the purpose of record sharing between governmental entities as provided in 63G-2-206, the Attorney General's Office is one governmental entity and all divisions in the office are part of that entity.

KEY: public records, government documents, records access, GRAMA
October 25, 2011 **63-2-204**
Notice of Continuation November 7, 2011 **63-2-904**

R152. Commerce, Consumer Protection.**R152-21. Credit Services Organizations Act Rules.****R152-21-1. Purpose.**

The purpose of this rule is to clarify the legal mandates and prohibitions of Section 13-21-3.

R152-21-2. Definitions.

The definitions set forth in Section 13-21-2, as well as the following supplementary definitions, shall be used in construing the meaning of this rule.

(1) "Challenge" means any act performed by a credit services organization for the purpose of facilitating the dispute, by any person, of an entry appearing on the buyer's credit report.

(2) "Credit report" means any document prepared by a credit reporting agency showing the credit-worthiness, credit standing, or credit capacity of the buyer.

(3) "Inaccurate information" means data affected by typographical errors and other similar inadvertent technical faults which create a reasonable doubt about the reliability of such data.

(4) "Material error" means false or misleading information that could reasonably affect a decision to extend or deny credit to the buyer. "Accurate" information contains no material errors.

(5) "Material omission" means missing information that could reasonably affect a decision to extend or deny credit to the buyer. "Complete" information contains no material omissions.

(6) "Outdated information" means information that should not appear on the buyer's credit report because of its age. How long a given entry may remain on a credit report is determined by applicable state and federal law. Information which is not outdated is "timely."

(7) "Unverifiable information" means an entry on a credit report lacking sufficient supporting evidence to convince a reasonable person that it is proper. Information which is not unverifiable is "verifiable".

R152-21-3. Factual Basis for Credit Report Challenges.

(1) A credit services organization shall not challenge an entry made on the buyer's credit report without first having a factual basis for believing that the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information.

(2) A credit services organization has a factual basis for challenging an entry on the buyer's credit report only when it:

(a) has received a written statement from the buyer identifying any entry on his credit report that he believes contains a material error or omission, or outdated, inaccurate, or unverifiable information;

(b) has conducted an investigation to determine if the information in the buyer's written statement is correct; and

(c) has concluded in good faith, based upon the results of its investigation, that the buyer's credit report contains one or more material errors or omissions, or outdated, inaccurate, or unverifiable information.

(3) In connection with any investigation undertaken pursuant to this rule, a credit services organization shall:

(a) contact the person who provided the information in question to the credit reporting agency and give him a reasonable opportunity to demonstrate the accuracy, completeness, timeliness, and verifiability of such information;

(b) memorialize, in writing and in detail, the results of the investigation; and

(c) retain the investigative report for not less two years after it is completed.

R152-21-4. Fraudulent Practices.

It shall be a violation of Section 13-21-3 for a credit

services organization to do any of the following:

(1) to state or imply that it can permanently remove from a buyer's credit report an accurate, complete, timely, and verifiable entry;

(2) to challenge an entry on a buyer's credit report without a factual basis for believing the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information; or

(3) to challenge an entry on a credit report for the purpose of temporarily denying accurate, complete, timely, and verifiable information to any person about the credit-worthiness, credit standing, or credit capacity of the buyer.

**KEY: credit services, consumer, protection
1994**

Notice of Continuation January 29, 2014

13-2-5

R152. Commerce, Consumer Protection.**R152-26. Telephone Fraud Prevention Act.****R152-26-1. Authority.**

These rules are promulgated pursuant to Section 13-2-5 to administer the Utah Telephone Fraud Prevention Act.

R152-26-2. Scope and Applicability.

These rules shall have the same scope and applicability as Title 13, Chapter 26.

R152-26-3. Definitions.

The following terms, in addition to the definitions appearing in Section 13-26-2, shall be used in construing this rule.

(1) "Director" means the director of the Utah Department of Commerce, Division of Consumer Protection.

(2) "Division" means the Utah Department of Commerce, Division of Consumer Protection.

(3) "Registrant" means any person who has submitted an application for registration to the division pursuant to Section 13-26-3.

(4) "Durable goods" means goods likely to be used for three years or more.

R152-26-4. Denial, Revocation, or Suspension of Registration.

(1) The director may deny an application for registration for the following reasons:

(a) the registrant has committed any of the violations of law set forth in Section 13-26-11; or

(b) the registrant has failed to comply with all of the requirements of Section 13-26-3 and these rules;

(2) The director may suspend or revoke a registration for any violation of Title 13, Chapter 26 by the registrant.

R152-26-5. Registration.

(1) A registrant shall submit an application for registration only on the form authorized by the division. An application may be summarily denied if:

(a) it is submitted on a form not authorized by the division;

(b) it is submitted on the authorized form but it is not legible; or

(c) it is submitted on the authorized form but it is incomplete in some material respect.

(2) The application shall include the following:

(a) the registrant's name, address, telephone number and facsimile number, if any;

(b) the names, addresses, birth dates and places, and social security numbers of all registrant's officers, directors, members, principals and/or key employees;

(c) the registrant's previous business addresses during the previous ten years;

(d) other names, if any, that the registrant does business under;

(e) identification of all licenses or permits currently held by the registrant and any that have been revoked or suspended;

(f) disclosure of any judgment, injunctive order or conviction of any of registrant's officers, directors, members, principals, or key-employees of racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion of property, misappropriation of property or other similar crimes;

(g) the name and address of the registrant's registered agent;

(h) the location where telephone numbers are to be dialed; and

(i) a description of the goods or services that are to be the subject of the telephone solicitation.

(3) Each registrant shall submit copies of the following documents with their application:

(a) All scripts to be used in the telephone solicitation;

(b) Articles of incorporation or other organizational documentation showing registrant's current legal status.

(4) At the option of the director, the processing of an application by the division's staff may be delayed to give the registrant an opportunity to cure technical defects in his application.

(5) If information in an application for registration or for renewal of registration as a telephone soliciting business materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the information changes or becomes incorrect or incomplete, submit the correct information on the corresponding page of the registration application with a cover page or letter clarifying that the submission is correcting information to an existing registration.

(a) Material changes to the legal status of the registrant's organization or ownership of the telephone soliciting business may not be submitted as an amendment to an existing registration. An initial application for registration must be completed and submitted for approval by the Division.

(b) The director may suspend or revoke a registration if material changes or corrections to the registration are not submitted as required by this rule.

R152-26-7. Bonds, Irrevocable Letters of Credit and Certificates of Deposit.

(1) At the option of the registrant, a bond, irrevocable letter of credit or certificate of deposit may be tendered to the division to fulfill the requirements of Section 13-26-3(3)(a).

(2) Whichever type of instrument is tendered by a registrant, payment is immediately due and owing to the division when:

(a) the director delivers a signed writing to the registrant's surety or issuing financial institution demanding payment of a specified sum of money; and

(b) the registrant's liability in the amount specified is demonstrated by a certified copy of the division's final order or the civil judgment of any Utah or federal court, which copy shall be attached to the director's demand for payment.

(3) The division may make a demand on a bond, irrevocable letter of credit or certificate of deposit either in its own right or as the representative of consumers who have been injured by the registrant's violation of Title 13, Chapter 26.

(4) Instruments tendered to the division under Section 13-26-3(3)(a) may be executed in any form that the director deems commercially and legally reasonable and consistent with this rule. The division's acceptance of a non-conforming instrument does not result in a waiver of the requirements of this rule.

R152-26-8. Isolated Transaction Exemption.

For purposes of Section 13-26-4(2)(i), an "isolated transaction" means no more than two occurrences in any twelve month period.

R152-26-9. Right of Rescission.

(1) For purposes of Section 13-26-5(2), a written notification of cancellation is effective the earlier of:

(a) when the notice is actually received by the seller; or

(b) when the notice is placed in the custody of the U.S. Postal Service, provided the postage is prepaid and the letter is properly addressed to the seller.

(2) A rescission letter is in the custody of the U.S. Postal Service when the letter is actually placed in the possession of a U.S. Postal Service employee or in a receptacle for letters authorized by the U.S. Postal Service.

KEY: telephones, fraud, consumers

January 7, 2014

Notice of Continuation August 9, 2011

13-2-5

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(6)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(7) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section

58-1-404.

(8) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(9) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(10) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(11) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(12) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(14) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(15) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.
 (b) The following factors may not be considered as mitigating circumstances:

- (i) forced or compelled restitution;
- (ii) withdrawal of complaint by client or other affected persons;
- (iii) resignation prior to disciplinary proceedings;
- (iv) failure of injured client to complain;
- (v) complainant's recommendation as to sanction; and
- (vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

(17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

(19) "Probation" means disciplinary action placing terms and conditions upon a licensee;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(22) "Reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-102a. Global Definitions of Levels of Supervision.

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

- (i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

R156-1-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services

Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (m), (o), (p), and (q), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The regulatory and compliance officer or other citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The

Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-202(1)(f) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons

for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d), (h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(a) Service may be made:

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

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

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

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

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

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

(5) There shall appear on all investigative subpoenas a certificate of service.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the

Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to

the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

- (1) aggravating circumstances, as defined in Subsection R156-1-102(2);
- (2) mitigating circumstances, as defined in Subsection R156-1-102(16);
- (3) the degree of risk to the public health, safety or welfare;
- (4) the degree of risk that a conduct will be repeated;
- (5) the degree of risk that a condition will continue;
- (6) the magnitude of the conduct or condition as it relates to the harm or potential harm;
- (7) the length of time since the last conduct or condition has occurred;
- (8) the current criminal probationary or parole status of the applicant or licensee;
- (9) the current administrative status of the applicant or licensee;
- (10) results of previously submitted applications, for any regulated profession or occupation;
- (11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;
- (12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;
- (13) psychological evaluations; or
- (14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

- (1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.
- (2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:
 - (a) advanced practice registered nurse;
 - (b) architect;
 - (c) audiologist;
 - (d) certified nurse midwife;
 - (e) certified public accountant emeritus;
 - (f) certified registered nurse anesthetist;
 - (g) certified court reporter;
 - (h) certified social worker;
 - (i) chiropractic physician;
 - (j) clinical mental health counselor;
 - (k) clinical social worker;
 - (l) contractor;
 - (m) deception detection examiner;
 - (n) deception detection intern;
 - (o) dental hygienist;
 - (p) dentist;
 - (q) direct-entry midwife;
 - (r) genetic counselor;
 - (s) health facility administrator;
 - (t) hearing instrument specialist;
 - (u) landscape architect;
 - (v) licensed advanced substance use disorder counselor;
 - (w) marriage and family therapist;
 - (x) naturopath/naturopathic physician;
 - (y) optometrist;
 - (z) osteopathic physician and surgeon;
 - (aa) pharmacist;
 - (bb) pharmacy technician;
 - (cc) physical therapist;
 - (dd) physician assistant;

- (ee) physician and surgeon;
- (ff) podiatric physician;
- (gg) private probation provider;
- (hh) professional engineer;
- (ii) professional land surveyor;
- (jj) professional structural engineer;
- (kk) psychologist;
- (ll) radiology practical technician;
- (mm) radiologic technologist;
- (nn) security personnel;
- (oo) speech-language pathologist;
- (pp) substance use disorder counselor; and
- (qq) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Advanced Practice Registered Nurse-CRNA	January 31	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years
(7) Audiologist	May 31	odd years
(8) Barber	September 30	odd years
(9) Barber School	September 30	odd years
(10) Building Inspector	November 30	odd years
(11) Burglar Alarm Security	March 31	odd years
(12) C.P.A. Firm	September 30	even years
(13) Certified Court Reporter	May 31	even years
(14) Certified Dietitian	September 30	even years
(15) Certified Medical Language Interpreter	March 31	odd years
(16) Certified Nurse Midwife	January 31	even years
(17) Certified Public Accountant	September 30	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Mental Health Counselor	September 30	even years
(21) Clinical Social Worker	September 30	even years
(22) Construction Trades Instructor	November 30	odd years
(23) Contractor	November 30	odd years
(24) Controlled Substance License	Attached to primary license renewal	

(25) Controlled Substance Precursor	May 31	odd years
(26) Controlled Substance Handler	September 30	odd years
(27) Cosmetologist/Barber	September 30	odd years
(28) Cosmetology/Barber School	September 30	odd years
(29) Deception Detection	November 30	even years
(30) Dental Hygienist	May 31	even years
(31) Dentist	May 31	even years
(32) Direct-entry Midwife	September 30	odd years
(33) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(34) Electrologist	September 30	odd years
(35) Electrology School	September 30	odd years
(36) Elevator Mechanic	November 30	even years
(37) Environmental Health Scientist	May 31	odd years
(38) Esthetician	September 30	odd years
(39) Esthetics School	September 30	odd years
(40) Factory Built Housing Dealer	September 30	even years
(41) Funeral Service Director	May 31	even years
(42) Funeral Service Establishment	May 31	even years
(43) Genetic Counselor	September 30	even years
(44) Health Facility Administrator	May 31	odd years
(45) Hearing Instrument Specialist	September 30	even years
(46) Internet Facilitator	September 30	odd years
(47) Landscape Architect	May 31	even years
(48) Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
(49) Licensed Practical Nurse	January 31	even years
(50) Licensed Substance Use Disorder Counselor	May 31	odd years
(51) Marriage and Family Therapist	September 30	even years
(52) Massage Apprentice, Therapist	May 31	odd years
(53) Master Esthetician	September 30	odd years
(54) Medication Aide Certified	March 31	odd years
(55) Nail Technologist	September 30	odd years
(56) Nail Technology School	September 30	odd years
(57) Naturopath/Naturopathic Physician	May 31	even years
(58) Occupational Therapist	May 31	odd years
(59) Occupational Therapy Assistant	May 31	odd years
(60) Optometrist	September 30	even years
(61) Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
(62) Outfitter/Hunting Guide	September 30	odd years
(63) Pharmacy Class A-B-C-D-E, Online Contract Pharmacy Pharmacist	September 30	odd years
(64) Pharmacy Technician	September 30	odd years
(65) Physical Therapist	May 31	odd years
(66) Physical Therapist Assistant	May 31	odd years
(67) Physician Assistant	May 31	even years
(68) Physician and Surgeon, Online Prescriber	January 31	even years
(69) Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
(70) Podiatric Physician	September 30	even years
(71) Pre Need Funeral Arrangement Sales Agent	May 31	even years
(72) Private Probation Provider	May 31	odd years
(73) Professional Engineer	March 31	odd years
(74) Professional Geologist	March 31	odd years
(75) Professional Land Surveyor	March 31	odd years
(76) Professional Structural Engineer	March 31	odd years
(77) Psychologist	September 30	even years
(78) Radiologic Technologist, Radiology Practical Technician, Radiologist Assistant	May 31	odd years
(79) Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
(80) Registered Nurse	January 31	odd years
(81) Respiratory Care Practitioner	September 30	even years
(82) Security Personnel	November 30	even years
(83) Social Service Worker	September 30	even years

(85) Speech-Language Pathologist	May 31	odd years
(86) Veterinarian	September 30	even years
(87) Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

(i) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(l) Type I Foreign Trained Physician-Educator licenses

will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof

and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(2) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the

license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

- (a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
- (b) pay the established license fee for a new applicant for licensure;
- (c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;
- (d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308I. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

- (a) communication between examinees inside of the examination room or facility during the course of the examination;
 - (b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;
 - (c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;
 - (d) permitting anyone to copy answers to the examination;
 - (e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;
 - (f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;
 - (g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.
- (3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may

enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference; or

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE	
FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
58-1-501(2)(o)	\$ 0 - \$250.00
SECOND OFFENSE	
58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
58-1-501(2)(o)	\$251.00 - \$500.00
THIRD OFFENSE	
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

- (1) the appropriate standards of care for performing nonablative cosmetic medical procedures;
- (2) physiology of the skin;
- (3) skin typing and analysis;
- (4) skin conditions, disorders, and diseases;
- (5) pre and post procedure care;
- (6) infection control;
- (7) laser and light physics training;
- (8) laser technologies and applications;
- (9) safety and maintenance of lasers;
- (10) cosmetic medical procedures an individual is permitted to perform under this title;
- (11) recognition and appropriate management of complications from a procedure; and
- (12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:
 - (a) American Heart Association;
 - (b) American Red Cross or its affiliates; or
 - (c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

January 21, 2014

Notice of Continuation January 5, 2012

58-1-106(1)(a)

58-1-308

58-1-501(2)

R156. Commerce, Occupational and Professional Licensing.**R156-42a. Occupational Therapy Practice Act Rule.****R156-42a-101. Title.**

This rule is known as the "Occupational Therapy Practice Act Rule".

R156-42a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 42a, as used in Title 58, Chapters 1 and 42a, or this rule:

(1) "General supervision", as used in Section 58-42a-304 and Subsection R156-42a-302b(2), means the supervising occupational therapist is:

(a) present in the area where the person supervised is performing services; and

(b) immediately available to assist the person being supervised in the services being performed.

(2) "Consult with the attending physician", as used in Subsection 58-42a-501(6), means that the occupational therapist will consult with the attending physician when an acute change of patient condition affects the occupational therapy services being performed.

(3) "Physical agent modalities", as used in Subsection 58-42a-102(9)(g), means specialized treatment procedures that produce a response in soft tissue through the use of light, water, temperature, sound or electricity such as hot packs, ice, paraffin, and electrical or sound currents.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 42a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-42a-502.

R156-42a-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 42a.

R156-42a-104. Organization - Relationship to Rule 156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-42a-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 42a is established by rule in R156-1-308a.

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

R156-42a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) delegating supervision, or occupational therapy services, care or responsibilities not authorized under Title 58, Chapter 42a or this rule;

(2) engaging in or attempting to engage in the use of physical agent modalities when not competent to do so by education, training, or experience;

(3) failing to provide general supervision as set forth in Title 58, Chapter 42a and this rule; and

(4) violating any provision of the American Occupational Therapy Association Code of Ethics, last amended April 2005, which is hereby adopted and incorporated by reference.

KEY: licensing, occupational therapy**December 22, 2009****58-1-106(1)(a)****Notice of Continuation January 21, 2014****58-1-202(1)(a)****58-42a-101**

R156. Commerce, Occupational and Professional Licensing.**R156-44a. Nurse Midwife Practice Act Rule.****R156-44a-101. Title.**

This rule is known as the "Nurse Midwife Practice Act Rule."

R156-44a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 44a, as used in Title 58, Chapters 1 and 44a or this rule:

(1) "Approved certified nurse midwifery education program" means an educational program which is accredited by the American Midwifery Certification Board (AMCB), affiliated with the American College of Nurse-Midwives (ACNM).

(2) "CNM" means a certified nurse midwife.

(3) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(4) "Direct supervision" as used in Section 58-44a-305 means that the person providing supervision shall be available on the premises at which the supervisee or consultee is engaged in practice.

(5) "Generally recognized scope and standards of nurse midwifery" means the scope and standards of practice set forth in the "Core Competencies for Basic Midwifery Practice", June 2012, and the "Standards for the Practice of Midwifery", September 2011, published by the American College of Nurse-Midwives which are hereby adopted and incorporated by reference, or as established by the professional community.

(6) "Intrapartum referral plan":

(a) is as defined in Section 58-44a-102; and

(b) as provided in Section 58-44a-102, does not require the signature of a physician.

(7) "Supervision" in Section R156-44a-601 means the provision of guidance or direction, evaluation and follow up by the certified nurse midwife for accomplishment of tasks delegated to unlicensed assistive personnel or other licensed individuals.

(8) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 44a, is further defined in Section R156-44a-502.

R156-44a-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 44a.

R156-44a-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.

R156-44a-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-44a-302(6), the examination required for licensure is the national certifying examination administered by the American Midwifery Certification Board, Inc.

R156-44a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308a(1).

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

(3) Each applicant for licensure renewal shall hold a valid certification from the American Midwifery Certification Board, Inc.

R156-44a-305. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in

accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-44a-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document one of the following:

(a) active licensure in another state or jurisdiction;

(b) completion of a refresher program approved by the American College of Nurse Midwives; or

(c) passing score on the required examinations as defined in Section R156-44a-302 within six months prior to making application to reactivate a license.

R156-44a-402. Administrative Penalties.

In accordance with Subsections 58-44a-102(1) and 58-44a-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in practice as a CNM or RN when not licensed or exempt from licensure: initial offense: \$2,000 - \$5,000

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

(2) Representing oneself as a CNM or RN when not licensed:

initial offense: \$100 - \$500

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

(3) Using any title that would indicate that one is licensed under this chapter:

initial offense: \$100 - \$500

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

(4) Practicing or attempting to practice nursing without a license or with a restricted license:

initial offense: \$2,000 - \$5,000

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

(5) Impersonating a licensee or practicing under a false name:

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

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

(6) Knowingly employing an unlicensed person:

initial offense: \$500 - \$1,000

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

(7) Knowingly permitting the use of a license by another person:

initial offense: \$500 - \$1,000

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

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the Division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:

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

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

(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nurse midwifery:

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

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

(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:

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

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

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:

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

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

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:

initial offense: \$100 - \$500

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

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a CNM:

initial offense: \$100 - \$500

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

(14) Practicing or attempting to practice as a CNM when physically or mentally unfit to do so:

initial offense: \$100 - \$500

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

(15) Practicing or attempting to practice as a CNM through gross incompetence, gross negligence, or a pattern of incompetency or negligence:

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

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

(16) Practicing or attempting to practice as a CNM by any form of action or communication which is false, misleading, deceptive, or fraudulent:

initial offense: \$100 - \$500

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

(17) Practicing or attempting to practice as a CNM beyond the individual's scope of competency, abilities, or education:

initial offense: \$100 - \$500

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

(18) Practicing or attempting to practice as a CNM beyond the scope of licensure:

initial offense: \$100 - \$500

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

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:

initial offense: \$100 - \$500

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

(20) Disregarding for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record:

initial offense: \$100 - \$500

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

(21) Engaging in an act, practice, or omission which does or could jeopardize the health, safety, or welfare of a patient or the public:

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

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

(22) Failing to confine one's practice to those acts permitted by law:

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

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

(23) Failure to file or impeding the filing of required reports:

initial offense: \$100 - \$500

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

(24) Breach of confidentiality:

initial offense: \$200 - \$1,000

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

(25) Failure to pay a penalty:

Double the original penalty amount up to \$10,000

(26) Prescribing a Schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:

initial offense: \$500 - \$1,000

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

(27) Failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii):

initial offense: \$500 - \$1,000

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

(28) Representing that the certified nurse midwife is in compliance with Subsection 58-44a-502(8)(a) when the certified nurse midwife is not in compliance with Subsection 58-44a-

502(8)(a):

initial offense: \$500 - \$1,000

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

(29) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

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

R156-44a-502. Unprofessional Conduct.

"Unprofessional conduct" includes failure to abide by the "Code of Ethics" published by the American College of Nurse-Midwives, October 2008, which is hereby adopted and incorporated by reference.

R156-44a-601. Delegation of Nursing Tasks.

In accordance with Subsection 58-44a-102(11), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed

plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

KEY: licensing, midwifery, certified nurse midwife

January 22, 2013 58-1-106(1)(a)

Notice of Continuation January 16, 2014 58-1-202(1)(a)
58-44a-101

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rule.

R156-46a-101. Title.

This rule is known as the "Hearing Instrument Specialist Licensing Act Rule."

R156-46a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or this rule, "unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-46a-502.

R156-46a-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 46a.

R156-46a-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.

R156-46a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-46a-302(1)(f) and 58-46a-302.5(2)(a), the requirements for the examination of a hearing instrument intern are defined to require a minimum score of 85% on each section of the Utah Law and Rules Examination for Hearing Instrument Specialists.

R156-46a-302b. Qualifications for Licensure - Internship Supervision Requirements.

In accordance with Subsections 58-46a-102(7) and 58-1-203(1)(b), the requirements for supervision of a hearing instrument intern are defined and clarified as follows. The hearing instrument intern supervisor shall:

- (1) supervise no more than one hearing instrument intern on direct supervision;
- (2) supervise no more than two hearing instrument interns at one time;
- (3) not begin an internship program until:
 - (a) the hearing instrument intern is properly licensed as a hearing instrument intern; and
 - (b) the supervisor is approved by the Division in collaboration with the Board; and
- (4) notify the Division within ten working days if an internship program is terminated.

R156-46a-303. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308a.
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-46a-304. Continuing Education.

In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

- (1) Continuing education courses shall be offered in the following areas:
 - (a) acoustics;
 - (b) nature of the ear (normal ear, hearing process, disorders of hearing);
 - (c) hearing measurement;
 - (d) hearing aid technology;
 - (e) selection of hearing aids;

- (f) marketing and customer relations;
- (g) client counseling;
- (h) ethical practice;
- (i) state laws and regulations regarding the dispensing of hearing aids; and
- (j) other areas deemed appropriate by the Division in collaboration with the Board.

(2) Continuing education courses required under this section shall be approved by the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS) Licensees shall retain copies of transcripts or certificates of completion from continuing education courses approved under this section for a period of four years, during which time the Division may audit the licensee's compliance with the requirements of this section.

(4) A minimum of 20 continuing education course hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;
- (2) failing to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;
- (3) dispensing a hearing aid without the purchaser having:
 - (a) received a medical evaluation as required by Subsection 58-46-502(5) within the six-month period prior to the purchase of a hearing aid; or
 - (b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.421, except a person under the age of 18 years may not waive the medical evaluation;
- (4) engaging in unprofessional conduct specified in Subsection 58-1-501(2)(h) including:
 - (a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact; and
 - (b) using stalling tactics, excuses, arguing or attempting to dissuade the purchaser to avoid or delay the customer from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and
- (5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Code of Ethics of the International Hearing Society, adopted March 2009, which is hereby incorporated by reference.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

- (1) The minimum components of a hearing aid examination are the following:
 - (a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;
 - (b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or nontest ear by 40 decibels at the same frequency;
 - (c) bone conduction tests at 500, 1000, and 2000 Hertz on every client with proper masking;
 - (d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements and measurements of uncomfortable levels of loudness (UCL); and
 - (e) recording and interpretation of audiograms and speech

audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only when the above procedures are clearly impractical may the selection of the best instrument to compensate for the loss be made by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(c) for calibration of all appropriate technical instruments used in practice is defined, clarified, and established as follows:

(1) any audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

January 21, 2014

58-1-106(1)(a)

Notice of Continuation January 27, 2014

58-1-202(1)(a)

58-46a-101

58-46a-304

**R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.**

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(p) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(17), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(39), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(21) and 58-55-102(32), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

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

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

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

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

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

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a

temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic cell panels and related components. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or

parking lighting.

A contractor who obtained this classification of licensure between January 1, 2009 and April 25, 2011 and who holds an active license may, in addition to the above, perform the following activities as part of the scope of practice under this subsection: fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a closed system not connected to the culinary water system. Notwithstanding the foregoing, where water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a contractor licensed under this subsection may connect the closed system to the backflow prevention device, which must be installed by an actively licensed plumber.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and

maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of rain gutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

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

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

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

(d) construction of retaining walls except retaining walls

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

(e) patio areas except that:

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

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

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

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

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

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt

overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural

subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

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

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

- (i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and
- (ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subclassifications:

TABLE I

Primary Classification	Included subclassifications
S200	S201, S202
S210	S211, S212, S213, S214, S215, S216, S217
S220	S221, S222
S230	S231
S260	S261, S262, S263
S270	S272, S273
S290	S291, S292, S293, S294
S320	S321, S322, S323
S350	S351, S325, S353, S354
S420	S421
S440	S441
S490	S491

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

- (a) sandblasting;
- (b) pumping services;
- (c) tree stump or tree removal;
- (d) installation within a building of communication cables including phone and cable television;
- (e) installation of low voltage electrical as described in R156-55b-102(1);
- (f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;
- (g) building and window washing, including power washing;
- (h) central vacuum systems installation;
- (i) concrete cutting;
- (j) interior decorating;
- (k) wall paper hanging;
- (l) drapery and blind installation;
- (m) welding on personal property which is not attached;
- (n) chimney sweepers other than repairing masonry;
- (o) carpet and vinyl floor installation; and

(p) artificial turf installation.

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

- (a) lead removal regulated by the Department of Environmental Quality;
- (b) asbestos removal regulated by the Department of Environmental Quality; and
- (c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

- (a) the Utah Contractor Business - Law Examination; and
- (b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

- E100 - General Engineering Contractor
- B100 - General Building Contractor
- B200 - Modular Unit Installation Contractor
- R100 - Residential and Small Commercial Contractor
- R101 - Residential and Small Commercial Non Structural Remodeling and Repair Contractor
- R200 - Factory Built Housing Contractor
- I101 - General Engineering Trades Instruction Facility
- I102 - General Building Trades Instruction Facility
- I105 - Mechanical Trades Instruction Facility
- S211 - Boiler Installation Contractor
- S212 - Irrigation Sprinkling Contractor
- S213 - Industrial Piping Contractor
- S215 - Solar Thermal Systems Contractor
- S216 - Residential Sewer Connection and Septic Tank Contractor

- S220 - Carpentry Contractor
- S222 - Overhead and Garage Door Contractor
- S230 - Siding Contractor
- S240 - Glass and Glazing Contractor
- S250 - Insulation Contractor
- S260 - General Concrete Contractor
- S270 - General Drywall and Plastering Contractor
- S280 - General Roofing Contractor
- S290 - General Masonry Contractor
- S293 - Marble, Tile and Ceramic Contractor
- S300 - General Painting Contractor
- S310 - Excavation and Grading Contractor
- S320 - Steel Erection Contractor
- S321 - Steel Reinforcing Contractor
- S330 - Landscaping Contractor
- S340 - Sheet Metal Contractor
- S350 - HVAC Contractor
- S351 - Refrigerated Air Conditioning Contractor
- S353 - Warm Air Heating Contractor
- S360 - Refrigeration Contractor
- S370 - Fire Suppression Systems Contractor
- S380 - Swimming Pool and Spa Contractor
- S390 - Sewer and Waste Water Pipeline Contractor
- S410 - Pipeline and Conduit Contractor
- S440 - Sign Installation Contractor
- S450 - Mechanical Insulation Contractor
- S490 - Wood Flooring Contractor
- S600 - General Stucco Contractor

- (3) The passing score for each examination is 70%.
- (4) Qualifications to sit for examination.
 - (a) An applicant applying to take any examination

specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or
 (b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and
 (b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) Unless otherwise provided in this rule, two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor licensed in the classification applied for or a substantially equivalent classification, and shall be subject to the following:

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

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

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

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

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

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

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

(b) Unless otherwise provided in this rule, all experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in Subsection (2)b, experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractor's license.

(f) If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) One of the required two years of experience shall be in a supervisory or managerial position.

(b) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have

one year of experience credited towards the supervisory or managerial experience requirement.

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

(3) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

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

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

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

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

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

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least \$100,000 for each incident and \$300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a;

and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a(1).

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

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

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

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

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;
- (iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

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

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

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review.

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

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

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

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

(7) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to

the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

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

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

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

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

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

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

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

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

R156-55a-304. Contractor License Qualifiers.

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

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

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

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

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

(2) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance,

with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the Division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than \$1,000 but less than \$3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least \$100,000 for each incident and \$300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306(2), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

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

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

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

(h) any history of prior entities owned or operated by the applicant, the licensee, or any owner that have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

- (a) general gas appliance installation codes;
- (b) venting requirements;
- (c) combustion air requirements;
- (d) gas line sizing codes;
- (e) gas line approved materials requirements;
- (f) gas line installation codes; and
- (g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

- (a) Federal Bureau of Apprenticeship Training;
- (b) Utah college apprenticeship program; and
- (c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the Division, to provide proof of insurance coverage within 30 days.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

Violation	FIRST OFFENSE	
	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	\$ 500.00	N/A
58-55-501(1)	\$ 500.00	\$ 500.00
58-55-501(2)	\$ 500.00	\$ 800.00
58-55-501(3)	\$ 800.00	\$1,000.00
58-55-501(9)	\$ 500.00	\$ 500.00
58-55-501(10)	\$ 800.00	\$1,000.00

58-55-501(12)	N/A	\$ 500.00
58-55-501(14)	\$ 500.00	N/A
58-55-501(19)	\$ 500.00	N/A
58-55-501(21)	\$ 500.00	\$ 500.00
58-55-501(24)	\$ 500.00	N/A
58-55-501(25)	\$ 500.00	N/A
58-55-504(2)	\$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	\$1,000.00	N/A
58-55-501(1)	\$1,000.00	\$1,500.00
58-55-501(2)	\$1,000.00	\$1,500.00
58-55-501(3)	\$1,600.00	\$2,000.00
58-55-501(9)	\$1,000.00	\$1,000.00
58-55-501(10)	\$1,600.00	\$2,000.00
58-55-501(12)	N/A	\$1,000.00
58-55-501(14)	\$1,000.00	N/A
58-55-501(19)	\$1,000.00	N/A
58-55-501(21)	\$1,000.00	\$1,000.00
58-55-501(24)	\$1,000.00	N/A
58-55-501(25)	\$1,000.00	N/A
58-55-504(2)	\$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators;

(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program; or

(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b), 58-55-306(4)(c) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be \$50,000 for the E100 or B100 classification of licensure; \$25,000 for the R100 classification of licensure; or \$15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing

January 21, 2014 58-1-106(1)(a)
Notice of Continuation October 4, 2011 58-1-202(1)(a)
 58-55-101
 58-55-308(1)(a)
 58-55-102(39)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule.
R156-61-101. Title.**

This rule is known as the "Psychologist Licensing Act Rule."

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-61-304(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 40 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

(5)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that is accredited at the time of completion of a doctoral psychology degree.

(b) No other accredited educational program at a degree granting institution is considered to meet the requirement in Subsections R156-61-302a(1), and in no case are departments or institutions of higher education considered accredited.

(6)(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(7) "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

(8) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

(9)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-103. 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 61.

R156-61-104. 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.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychologist Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The committee shall assist the Division in its duties, functions, and responsibilities defined in Section 58-1-202 including:

(a) upon the request of the Division, reviewing reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advising the Division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the Division providing expert

advice to the Division with respect to conduct of an investigation; and

(c) when appropriate serving as an expert witness in matters before the Division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant shall graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA shall meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be an institution having a doctoral psychology program recognized by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Joint Designation Committee as being found to meet "designation criteria", at the time the applicant received the earned degree. Whether a program is found to meet designation criteria is a decision to be made by the ASPPB/National Register Joint Designation Committee; or

(b) if located outside of the United States or Canada, be an institution that meets the ASPPB National Register (NR) Designation Guidelines for defining a doctoral degree in psychology as determined by the NR.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(5), and shall meet requirements of Subsections R156-61-302a(2).

(4) The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) An applicant for licensure as a psychologist under Subsection 58-61-304(1)(e) or mental health therapy under Subsections 58-61-304(1)(e) and (1)(f) shall complete a minimum of 4,000 hours of psychology training approved by the Division in collaboration with the Board. The training shall:

(a) be completed in not less than two years;

(b) be completed in not more than four years following the awarding of the doctoral degree unless the Division in collaboration with the Board approves an extension due to extenuating circumstances;

(c) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

(d) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d;

(e) if completed under the supervision of a qualified faculty member who is not an approved psychology training supervisor in accordance with Subsection R156-61-302d, the training shall not be credited toward the 4,000 hours of psychology doctoral clinical training;

(f) be completed as part of a supervised psychology

training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(g) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

(5) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b(1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1).

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which shall be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychologist Law and Ethics Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Psychologist Law and Ethics examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the Division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a Division or Board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will only be allowed subsequent admission to the examination after the applicant has appeared before the Board, developed with the Board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the Board.

(5) An applicant who is found to be cheating on the EPPP

examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the Division in collaboration with the Board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Psychologist Law and Ethics Examination shall pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application shall be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement shall pass the Utah Psychologist Law and Ethics Examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application shall be denied.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

In accordance with Subsections 58-61-304(1)(e) and (f), to be approved by the Division in collaboration with the Board as a supervisor of psychology or mental health therapy training, an individual shall:

- (1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and
- (2) have practiced as a licensed psychologist for not fewer than 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows. The psychologist supervisor shall:

- (1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy license;
- (2) engage 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) supervise not more than three full-time equivalent supervisees unless otherwise approved by the Division in collaboration with the Board;
- (4) 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, ability to diagnose patients, and other factors determined by the supervisor;
- (5) comply with the confidentiality requirements of Section 58-61-602;
- (6) provide timely and periodic review of the client records assigned to the supervisee;
- (7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;
- (8) submit appropriate documentation to the Division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;

(9) ensure that the supervisee is certified by the Division as a psychology resident, or is enrolled in a psychology doctoral program and engaged in a training experience authorized by the educational program;

(10) ensure the psychologist supervisor is legally able to personally provide the services which the psychologist supervisor is supervising; and

(11) ensure the psychologist supervisor meets all other requirements for supervision as described in this section.

R156-61-302f. 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 61, is established by rule in Section R156-1-308a.

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

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of a license after two years following expiration of that license shall:

(1) upon request meet with the Board for the purpose of evaluating the applicant's current ability to safely and competently engage in practice as a psychologist and to make a determination of 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 psychology and/or mental health therapy training;

(3) take or retake, and pass the Utah Psychology Law Examination; or the EPPP Examination, or both, if it is determined by the Board it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(4) complete a minimum of 48 hours of professional education in subjects determined necessary by the Board to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing education requirement for all individuals licensed or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of continuing education directly related to the licensee's professional practice;

(b) a certified psychology resident shall be required to complete not less than 24 hours of continuing education directly related to professional practice.

(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) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

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

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

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

(e) have associated with it a competent method of registration of individuals who actually completed the

professional education program and records of that registration and completion are available for review.

(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.

(b) A maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching continuing education courses in the field of psychology, or supervision of an individual completing the experience requirement for licensure as a psychologist.

(c) A minimum of six hours per two year period shall be completed in ethics/law.

(d) A maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist.

(e) A maximum of 18 hours per two year period may be recognized for Internet or distance learning courses that includes an examination, a completion certificate and recognized by the American Psychological Association or a state or province psychological association.

(f) A maximum of six hours per two year period may be recognized for regular peer consultation, review and meetings if properly documented that the peer consultation, review and meetings meet the following requirements:

(i) have an identifiable clear statement of purpose and defined objective for the educational consultation/meeting directly related to the practice of a psychologist;

(ii) are relevant to the licensee's professional practice;

(iii) are presented in a competent, well organized manner consistent with the stated purpose and objective of the consultation/meeting;

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

(v) have associated with it a competent method of registration of individuals who attended.

(6) A licensee shall be responsible for maintaining competent records of completed qualified 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 information with respect to qualified professional education to demonstrate it meets the requirements under this section.

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, June 1, 2010 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) 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 his 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 psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) 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;

(14) 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;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;

(21) supervising a residency program of an individual who is not certified as a psychology resident; or

(22) when providing services remotely:

(a) failing to practice according to professional standards of care in the delivery of services remotely;

(b) failing to protect the security of electronic, confidential data and information; or

(c) failing to appropriately store and dispose of electronic, confidential data and information.

KEY: licensing, psychologists

November 7, 2013

Notice of Continuation January 13, 2014

58-1-106(1)(a)

58-1-202(1)(a)

58-61-101

**R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.**

R156-67-101. Title.

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. 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 67.

R156-67-104. 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.

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the

required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years;

or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;
 (b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(3) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health; and

(4) in accordance with Section 58-67-305, a medical assistant, while working under the indirect supervision of a

licensed physician and surgeon, may not additionally engage in:

- (a) diagnosing; or
- (b) establishing a treatment plan.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603; and

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted

by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):
 First Offense: \$100-\$500
 Second Offense: \$500-\$3,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):
 First Offense: \$100-\$5,000
 Second Offense: \$500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):
 First Offense: \$5,000-\$10,000
 Second Offense: \$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard

applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
 First Offense: \$500-\$5,000
 Second Offense: \$1,500-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
 First Offense: \$1,000-\$5,000
 Second Offense: \$5,000-\$10,000
 Ongoing Offense(s): \$2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of

Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

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

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

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

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ii) 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):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

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

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(nn) 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 in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, 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):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(vv) 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):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the "AMA Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or

therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: physicians, licensing

January 7, 2014

Notice of Continuation March 14, 2011

58-67-101

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.**

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

- (1) "AAPS" means American Association of Physician Specialists.
- (2) "ABMS" means American Board of Medical Specialties.
- (3) "ACCME" means Accreditation Council for Continuing Medical Education.
- (4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:
 - (a) not generally recognized as standard in the practice of medicine;
 - (b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and
 - (c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.
- (5) "AMA" means the American Medical Association.
- (6) "AOA" means American Osteopathic Association.
- (7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.
- (8) "FLEX" means the Federation of State Medical Boards Licensure Examination.
- (9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.
- (10) "FSMB" means the Federation of State Medical Boards.
- (11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.
- (12) "LMCC" means the Licentiate of the Medical Council of Canada.
- (13) "NBME" means the National Board of Medical Examiners.
- (14) "NBOME" means the National Board of Osteopathic Medical Examiners.
- (15) "NPDB" means the National Practitioner Data Bank.
- (16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.
- (17) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. 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 68.

R156-68-104. 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.

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

- (1) American Osteopathic Association Profile or American Medical Association Profile;
- (2) Federation of State Medical Boards Disciplinary Inquiry form; and
- (3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

- (a) the NBOME parts I, II and III;
 - (b) the NBOME parts I, II and the NBOME COMPLEX Level III;
 - (c) the NBOME part I and the NBOME COMPLEX Level II and III;
 - (d) the NBOME COMPLEX Level I, II and III;
 - (e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;
 - (f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;
 - (g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;
 - (h) the LMCC examination, Parts 1 and 2;
 - (i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;
 - (j) the FLEX component 1 and the USMLE step 3; or
 - (k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.
- (2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:
- (a) has not practiced in the past five years;
 - (b) has had disciplinary action within the past five years;
- or
- (c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.
- (3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.
- (4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

- (1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.
- (2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.
- (3) Requirements for admission to the USMLE step 3 are:
 - (a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);
 - (b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;
 - (c) have passed the first USMLE step taken, either 1 or 2, within seven years; and
 - (d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an AOA or ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

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

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

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with

respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(3) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits; and

(4) In accordance with Section 58-68-305, a medical assistant, while working under the indirect supervision of a licensed osteopathic physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate

pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603; and

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-68-503. Administrative Penalties.

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients

in violation of Subsection 58-68-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: \$100-\$500

Second Offense: \$500-\$3,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: \$100-\$5,000

Second Offense: \$500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the

second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or

profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

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

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

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

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ii) 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):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

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

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(nn) 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 in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$5000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(qq) violating any federal or state law relating to

controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, 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):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(vv) 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):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical

records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: osteopaths, licensing, osteopathic physician

January 7, 2014

58-1-106(1)(a)

Notice of Continuation February 7, 2013

58-1-202(1)(a)

58-68-101

**R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rule.
R156-69-101. Title.**

This rule is known as the "Dentist and Dental Hygienist Practice Act Rule."

R156-69-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 69, as used in Title 58, Chapters 1 and 69 or this rule:

- (1) "ACLS" means Advanced Cardiac Life Support.
- (2) "ADA" means the American Dental Association.
- (3) "ADA CERP" means American Dental Association Continuing Education Recognition Program.
- (4) "Advertising or otherwise holding oneself out to the public as a dentist" means representing or promoting oneself as a dentist through any of the following or similar methods:
 - (a) business names;
 - (b) business signs;
 - (c) door or window lettering;
 - (d) business cards;
 - (e) letterhead;
 - (f) business announcements;
 - (g) flyers;
 - (h) mailers;
 - (i) promotions;
 - (j) advertisements;
 - (k) radio or television commercials;
 - (l) listings in printed or online telephone directories; or
 - (m) any other type of advertisement or promotional communication.
- (5) "BCLS" means Basic Cardiac Life Support.
- (6) "ADHA" means the American Dental Hygienists' Association.
- (7) "CPR" means cardiopulmonary resuscitation.
- (8) "CRDTS" means the Central Regional Dental Testing Service, Inc.
- (9) "Competency" means displaying special skill or knowledge derived from training and experience.
- (10) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.
- (11) "DANB" means the Dental Assisting National Board, Inc.
- (12) "Deep sedation" means a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.
- (13) "General anesthesia" means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method or a combination thereof.
- (14) "NERB" means Northeast Regional Board of Dental Examiners, Inc.
- (15) "PALS" means Pediatric Advanced Life Support.
- (16) "Practice of dentistry" in regard to administering anesthesia is further defined as follows:
 - (a) a Class I permit allows for local anesthesia which is the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;
 - (b) a Class II permit allows for minimal sedation which is a minimally depressed level of consciousness induced by nitrous oxide, or by a pharmacological method, or by both, that retains the patient's ability to independently and consciously maintain

an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected;

(c) a Class III permit allows for moderate sedation in which a drug induced depression of consciousness occurs during which a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient's airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(d) a Class IV permit allows for deep sedation in which a drug induced depression of consciousness occurs from which a patient cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. A patient may require assistance in maintaining an airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(17) "Prominent disclaimer" means a disclaimer as described in and as required by Subsection R156-69-502(2)(ii) that:

(a) if in writing, is in the same size of lettering as the largest lettering otherwise contained in an advertisement, publication, or other communication in which the disclaimer appears; or

(b) if not in writing, is in the same volume and speed as the slowest speed and highest volume otherwise included in a radio or television commercial or other oral advertisement or promotion in which the disclaimer appears.

(18) "Specialty area" means an area of dentistry proposed in a formal application by a sponsoring organization to the Council on Dental Education and Licensure and formally approved by the ADA as meeting the "Requirements for Recognition of Dental Specialists". Specialty areas include the following:

- (a) orthodontics;
 - (b) oral and maxillofacial surgery;
 - (c) oral and maxillofacial pathology;
 - (d) pediatric dentistry;
 - (e) periodontics;
 - (f) endodontics;
 - (g) prosthodontics;
 - (h) dental public health; and
 - (i) oral and maxillofacial radiology.
- (19) "SRTA" means Southern Regional Testing Agency, Inc.

(20) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 69, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.

- (21) "UDA" means Utah Dental Association.
- (22) "UDHA" means Utah Dental Hygienists' Association.
- (23) "WREB" means the Western Regional Examining Board.

R156-69-103. 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 69.

R156-69-104. 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.

R156-69-201. Classifications of Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(a), a dentist may be issued an anesthesia and analgesia permit in the following classifications:

- (1) class I permit;
- (2) class II permit;
- (3) class III permit; and
- (4) class IV permit.

R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for anesthesia and analgesia permits are:

- (1) for a class I permit:
 - (a) current licensure as a dentist in Utah; and
 - (b) documentation of current CPR or BCLS certification;
- (2) for a class II permit:
 - (a) current licensure as a dentist in Utah;
 - (b) documentation of current BCLS certification;
 - (c) evidence of successful completion of training in the administration of nitrous oxide and pharmacological methods of conscious sedation that:
 - (i) conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, which is incorporated by reference; or
 - (ii) is the substantial equivalent of Subsection (2)(c)(i) provided in a continuing education format offered by an American Dental Association accredited school; and
 - (d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);
- (3) for a class III permit:
 - (a) compliance with Subsections (1)(a) and (2) above;
 - (b) evidence of current Advanced Cardiac Life Support (ACLS) certification;
 - (c) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;
 - (d) evidence of successful completion of:
 - (i)(A) a comprehensive predoctoral or post doctoral training in the administration of conscious sedation that conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, including a letter from the course director documenting competency in performing conscious sedation; and
 - (B) 60 hours of didactic education in sedation and successful completion of 20 cases; or
 - (ii) the substantial equivalent of Subsection (3)(d)(i) provided in a continuing education format offered by an American Dental Association accredited school; and
 - (e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and
- (4) for a class IV permit:
 - (a) compliance with Subsections (1), (2), and (3) above;
 - (b) evidence of current ACLS certification;
 - (c) evidence of having successfully completed advanced training in the administration of general anesthesia and deep sedation consisting of not less than one year in a program which conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, and a letter from the course director documenting competency in performing general anesthesia and deep sedation;
 - (d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and
 - (e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).

R156-69-203. Classification of Anesthesia and Analgesia

Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(a), a dental hygienist may be issued an anesthesia and analgesia permit in the classification of local anesthesia.

R156-69-204. Qualifications for Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for a local anesthesia permit are the following:

- (1) current Utah licensure as a dental hygienist or documentation of meeting all requirements for licensure as a dental hygienist;
- (2) successful completion of a program of training in the administration of local anesthetics that:
 - (i) is accredited by the Commission on Dental Accreditation of the ADA; or
 - (ii) is the substantial equivalent of Subsection (2)(i) provided in a continuing education format offered by an American Dental Association accredited school; and
- (3)(a) a passing score on the WREB, NERB, SRTA, or CRDTS anesthesia examination; or
- (b) documentation of having a current, active license to administer local anesthesia in another state in the United States; and
- (4) documentation of current CPR or BCLS certification.

R156-69-302b. Qualifications for Licensure - Examination Requirements - Dentist.

In accordance with Subsections 58-69-302(1)(f) and (g), the examination requirements for licensure as a dentist include the periodontics section and are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the NERB examination with a passing score as established by the NERB;
- (3) the SRTA examination with a passing score as established by the SRTA; or
- (4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-302c. Qualifications for Licensure - Examination Requirements - Dental Hygienist.

In accordance with Subsections 58-69-302(3)(f) and (g), the examination requirements for licensure as a dental hygienist are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the NERB examination with a passing score as established by the NERB;
- (3) the SRTA examination with a passing score as established by the SRTA; or
- (4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-302d. Licensing of Dentist-Educators.

In accordance with Subsection 58-69-302.5(2)(a)(i), submission of information maintained in a practitioner data bank means submission to the National Practitioner Data Bank (NPDB).

R156-69-303. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 69, is established by rule in Section R156-1-308a.
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-69-304a. Continuing Education - Dentist and Dental

Hygienist.

In accordance with Section 58-69-304, qualified continuing professional education requirements are established as the following:

(1) All licensed dentists and dental hygienists shall complete 30 hours of qualified continuing professional education during each two year period of licensure.

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

(3) 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 dental and dental hygiene continuing education; and

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

(4) 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 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

(i) the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges;

(iii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of dentistry and dental hygiene; or

(iv) ADA or any subgroup thereof, the ADHA or any subgroup thereof, an accredited dental, dental hygiene or dental postgraduate program, a government agency, a recognized health care professional association or a peer study club;

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to dentistry and dental hygiene;

(c) a maximum of 15 hours per two year period may be recognized for continuing education that is provided via Internet or through home study which provides an examination and a completion certificate;

(d) a maximum of six hours per two year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing; and

(e) qualified continuing professional education may include up to three hours in practice and office management.

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

(6) Hours for recertification in CPR, BCLS, ACLS and PALS do not count as continuing education.

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

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

(1) failing to provide continuous in-operative observation by a trained dental patient care staff member for any patient under nitrous oxide administration;

(2) advertising or otherwise holding oneself out to the public as a dentist or dental group that practices in a specialty area unless:

(i) each dentist has successfully completed an advanced educational program accredited by the ADA's Commission on Dental Accreditation (or its equivalent if completed prior to 1967) of two or more years in length, as specified by the Council on Dental Education and Licensure;

(ii) as specified in Subsection 58-69-502(2)(b), the advertisement or other method of holding oneself out to the public as a dentist or dental group includes a prominent disclaimer that the dentist or dentists performing services are licensed as general dentists or that the specialty services will be provided by a general dentist;

(iii) the advertisement or other method of holding oneself out to the public as a dentist or dental group that practices in a specialty area includes a prominent disclaimer that the dentist or dentists performing services is a specialist, but not qualified as a specialist in the specialty area being advertised; or

(iv) otherwise advertising in a specialty area by representing that a dentist has attained any education, training or certification in the specialty area when the dentist has not met the criteria;

(3) advertising in any form that is misleading, deceptive, or false; including the display of any credential, education, or training that is inaccurate, or the making of any unsubstantiated claim of superiority in training, skill, experience, or any other quantifiable aspect;

(4) prescribing treatments and medications outside the scope of dentistry;

(5) prescribing for oneself any Schedule II or III controlled substance;

(6) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;

(7) failing to personally maintain current CPR or BCLS certification, or employing patient care staff who fail to maintain current CPR or BCLS certification;

(8) providing consulting or other dental services under anonymity;

(9) engaging in unethical or illegal billing practices or fraud, including:

(a) reporting an incorrect treatment date for the purpose of obtaining payment;

(b) reporting charges for services not rendered;

(c) incorrectly reporting services rendered for the purpose of obtaining payment;

(d) generally representing a charge to a third party that is different from that charged to the patient;

(10) failing to establish and maintain appropriate dental records;

(11) failing to maintain patient records for a period of seven years;

(12) failing to provide copies of x-rays, reports or records to a patient or the patient's designee upon written request and payment of a nominal fee for copies regardless of the payment status of the services reflected in the record; and

(13) failing to submit a complete report to the Division within 30 calendar days concerning an incident, in which any anesthetic or sedative drug was administered to any patient, which resulted in, either directly or indirectly, the death or adverse event resulting in patient admission to a hospital.

R156-69-601. Scope of Practice - Anesthesia and Analgesia Permits.

In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:

(1) A dentist with a class I permit:

(a) may administer or supervise the administration of any legal form of non-drug induced conscious sedation or drug induced conscious sedation except:

- (i) the administration of inhalation agents including nitrous oxide; and
 - (ii) the administration of any drug for sedation by any parenteral route; and
- (b) shall maintain and ensure that all patient care staff maintain current CPR certification.

(2) A dentist with a class II permit:

(a) may administer or supervise the administration of nitrous oxide induced conscious sedation in addition to the privileges granted to one holding a Class I permit; and

(b) shall ensure that:

(i) every patient under nitrous oxide administration is under continuous in-operative observation by a member of the dental patient care staff;

(ii) nitrous oxide and oxygen flow rates and sedation duration and clearing times are appropriately documented in patient records;

(iii) reasonable and prudent controls are in place and followed in regard to nitrous oxide to ensure the health and safety of patients, dental office personnel, and the general public;

(iv) the dental facility is equipped with adequate and appropriate equipment, in good working order, to assess vital signs; and

(v) equipment used in the administration of nitrous oxide has a scavenging system and that all gas delivery units have an oxygen fail-safe system.

(3) A dentist with a class III permit:

(a) may administer or supervise the administration of parenteral conscious sedation in addition to the privileges granted one holding a Class I and Class II permit; and

(b) shall ensure that:

(i) the dental facility has adequate and appropriate monitoring equipment, including pulse oximetry, current emergency drugs, and equipment capable of delivering oxygen under positive pressure;

(ii) the patient's heart rate, blood pressure, respirations and responsiveness are checked at specific intervals during the anesthesia and recovery period and that these observations are appropriately recorded in the patient record;

(iii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, and resuscitation medications;

(iv) the above equipment is inspected annually by a certified technician and is calibrated and in good working order;

(v) inhalation agents' flow rates and sedation duration and clearing times are appropriately documented in patient records; and

(vi) a minimum of two persons, with one person constantly monitoring the patient, are present during the administration of parenteral conscious sedation as follows:

(A) an operating permittee dentist and a BCLS certified assistant trained and qualified to monitor appropriate and required physiologic parameters;

(B) an operating dentist and a permittee dentist; or

(C) an operating permittee dentist and another licensed professional qualified to administer this class of anesthesia.

(4) A dentist with a class IV permit;

(a) may administer or supervise the administration of general anesthesia or deep sedation in addition to the privileges granted one holding a class I, II and III permit; and

(b) shall ensure that:

(i) the dental facility is equipped with precordial stethoscope for continuous monitoring of cardiac function and respiratory work, electrocardiographic monitoring and pulse oximetry, means of monitoring blood pressure, and temperature

monitoring; the preceding or equivalent monitoring of the patient will be used for all patients during all general anesthesia or deep sedation procedures; in addition, temperature monitoring will be used for children;

(ii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and defibrillator;

(iii) the above equipment is inspected annually by a certified technician and is calibrated and in good working order; and

(iv) three qualified and appropriately trained individuals are present during the administration of general anesthesia or deep sedation as follows:

(A) an operating dentist holding a permit under this classification, an anesthesia assistant trained to observe and monitor the patient using the equipment required above, and an individual to assist the operating dentist;

(B) an operating dentist, an assistant to the dentist and a dentist holding a permit under this classification; or

(C) another licensed professional qualified to administer this class of anesthesia and an individual to assist the operating dentist.

(5) Any dentist administering any anesthesia to a patient which results in, either directly or indirectly, the death or adverse event resulting in hospitalization of a patient shall submit a complete report of the incident to the Board within 30 days.

R156-69-602. Practice of Dental Hygiene.

In accordance with Subsection 58-69-102(7)(a)(ix), other practices of dental hygiene include performing laser bleaching and laser periodontal debridement.

R156-69-603. Use of Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803, the standards regulating the use of unlicensed individuals as dental assistants are that an unlicensed individual shall not, under any circumstance:

- (1) render definitive treatment diagnosis;
- (2) place, condense, carve, finish or polish restorative materials, or perform final cementation;
- (3) cut hard or soft tissue or extract teeth;
- (4) remove stains, deposits, or accretions, except as is incidental to polishing teeth coronally with a rubber cup;
- (5) initially introduce nitrous oxide and oxygen to a patient for the purpose of establishing and recording a safe plane of analgesia for the patient, except under the direct supervision of a licensed dentist;
- (6) remove bonded materials from the teeth with a rotary dental instrument or use any rotary dental instrument within the oral cavity except to polish teeth coronally with a rubber cup;
- (7) take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except for diagnostic or opposing models for the fabrication of temporary or provisional restorations or appliances;
- (8) correct or attempt to correct the malposition or malocclusion of teeth, or make an adjustment that will result in the movement of teeth upon an appliance which is worn in the mouth;
- (9) perform sub-gingival instrumentation;
- (10) render decisions concerning the use of drugs, their dosage or prescription;
- (11) expose radiographs without meeting the following criteria:
 - (a) completing a dental assisting course accredited by the ADA Commission on Dental Accreditation; or
 - (b) passing one of the following examinations:
 - (i) the DANB Radiation Health and Safety Examination

(RHS); or

(ii) a radiology exam approved by the Board that meets the criteria established in Section R156-69-604; or

(12) work without a current CPR or BCLS certification.

R156-69-604. Radiology Course for Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803 and Subsection 58-54-4.3(2), the radiology course in Subsection R156-69-603(11) shall include radiology theory consisting of:

- (1) orientation to radiation technology;
- (2) terminology;
- (3) radiographic dental anatomy and pathology (cursory);
- (4) radiation physics (basic);
- (5) radiation protection to patient and operator;
- (6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;
- (7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;
- (8) intraoral and extraoral radiographic techniques;
- (9) processing techniques including proper disposal of chemicals; and
- (10) infection control in dental radiology.

KEY: licensing, dentists, dental hygienists

January 21, 2014

58-69-101

Notice of Continuation March 10, 2011

58-1-106(1)(a)

58-1-202(1)(a)

R277. Education, Administration.**R277-497. School Grading System.****R277-497-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "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.
- C. "Sufficient student growth" as determined by the Board, means a student growth percentile of 40 or above.

KEY: school reports, grading system**January 8, 2014****Notice of Continuation November 8, 2013****Art X, Sec 3****53A-1-1113****53A-1-401(3)****R277-497-2. 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-1-1113 which directs the Board to adopt rules to implement a school grading system, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions, standards and procedures for LEAs to report school data through a school grading system.

R277-497-3. Board Responsibilities.

A. Beginning in the 2012-2013 school year, the Board shall implement a school grading system (A,B,C,D,F). The school grading system report provided by the Board shall include the following indicators:

- (1) student proficiency on the Board-approved grade/subject level assessments in language arts, math and science;
 - (2) sufficient student growth; and
 - (3) for high schools:
 - (a) graduation rates; and
 - (b) beginning in the 2013-14 school year, ACT scores.
- B. School letter grades shall be determined as follows:
- (1) 80 - 100 percent A;
 - (2) 70 - 79 percent B;
 - (3) 60 - 69 percent C;
 - (4) 50 - 59 percent D; and
 - (5) below 50 percent F.

C. Beginning with the 2012-2013 school year data, the Board shall:

- (1) implement a school grading system that makes data and reports available to parents, educators and the public. The report shall include the elements described in R277-497-3A.
- (2) School data and reports shall be available to parents, educators and the public through a public website that facilitates the comparison of public schools based on the school grading system and demographics.

D. The Board-implemented school grading system shall include test scores for students with disabilities consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).

R277-497-4. LEA Responsibilities.

A. LEAs shall provide accurate and timely data as required under R277-484 to allow for the development of the school reports.

B. LEAs shall use the school reports as a communication tool to inform parents and the community about school performance.

C. LEAs shall ensure that the school reports are available for all parents.

R277-497-5. School Responsibilities.

A. Schools shall provide data for the school reports as provided in R277-484.

B. Schools shall cooperate with the Board and LEAs to ensure that the school reports are available for all parents.

R277. Education, Administration.**R277-525. Special Educator Stipends.****R277-525-1. Definitions.**

A. "After the school year" means two weeks after the final day of the required contract period, as determined by the employer. For year-round schools, "after the school year" means off-track periods, but not vacation periods.

B. "Before the school year" means two weeks before the first day of the required contract period, as determined by the employer.

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

D. "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.

E. "Duties related to the IEP process" means;

- (1) duties/responsibilities provided in 53A- 17a-156(4);
- (2) preparing paperwork related to the implementation of IDEA; and
- (3) other duties or responsibilities related to the IEP process, as determined by the special educator.

Duties related to the IEP process do not include:

- (1) professional development;
- (2) district level planning; and
- (3) direct student instruction.

F. "Federal law regulating students with disabilities" means the Individual with Disabilities Education Act (IDEA), Title 1, Part A, Section 602.

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

H. "Special educator," for purposes of this rule, means:

- (1) a licensed special education teacher as defined under 53A-17a-158(c); or
- (2) a licensed speech-language pathologist as defined under Section 53A-17a-158(c).

I. "Special education teacher" means an individual who has a Utah educator license with a special education area of concentration and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

J. "Speech-language pathologist" means an individual who has a Utah educator license with a speech-language pathologist area of concentration or a speech-language pathologist license and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

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

L. "Work day for special educator" means the special educator's contract day as determined by the employer. Stipends shall only be paid for actual days worked. A teacher shall not be paid if days/hours are not actually worked. Days are not transferable among teachers.

R277-525-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-158 which requires the Board to distribute money appropriated for stipends for special educators for additional days of work.

B. The purpose of this rule is provide standards and procedures for distributing money appropriated for stipends for special educators for additional days of work:

(1) in recognition of the added duties and responsibilities assumed by special educators to comply with federal law regulating the education of students with disabilities; and

(2) the need to attract and retain qualified special educators.

R277-525-3. LEA Responsibilities.

A. LEAs shall contract with individual special educators, defined under R277-525-1F, and request in writing from the special educators:

(1) the number of days (not to exceed 10 or the number of days established by the Board) that the special educator commits to work consistent with R277-525-1G and H; and

(2) the time period (before the school year begins or after the school year ends) that the special educator commits to working the additional days.

B. Special educators hired by LEAs after October 15 shall receive funding for extra days to the extent of funds available.

C. LEAs shall maintain a record of the number of days worked by special educators on CACTUS as follows:

(1) no later than October 1 for special educators who worked before the school year began; and

(2) no later than June 30 for special educators who worked after the school year ended.

D. LEAs shall submit a final report to the USOE no later than June 30 annually that provides:

(1) the number of contract days worked by designated special educators; and

(2) other assessment or evaluation information requested from the USOE.

R277-525-4. Board/USOE Responsibilities.

A. The Board shall annually review this program and determine, based upon the annual appropriation, the number of special education days that shall be funded.

B. To simplify accounting and evaluation requirements for LEAs, the USOE shall:

(1) provide model tracking and accounting materials to LEAs;

(2) provide a checklist of appropriate duties or tasks for special educators consistent with R277-525-1E;

(3) distribute funds to participating LEAs for eligible special educators on a semiannual basis; and

(4) request and collect data based on the number of work days reported on CACTUS by October 1 and June 30 or both, as requested by the Board.

KEY: special educators, stipends**January 8, 2014****Notice of Continuation June 10, 2013****Art X Sec 3****53A-1-401(3)****53A-17a-158**

R277. Education, Administration.

R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.

R277-704-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Financial and economic literacy project" means a program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.
- C. "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.
- D. "Professional development" for public school educators means the act of engaging in professional learning in order to improve student learning.
- E. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:
 - (1) all Board and LEA board graduation requirements;
 - (2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;
 - (3) evidence of parent, student, and school representative involvement annually; and
 - (4) attainment of approved workplace skill competencies.
- F. "USOE" means the Utah State Office of Education.

R277-704-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-13-110 which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is:
 - (1) to provide funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels;
 - (2) to begin the development of a financial and economic literacy student passport;
 - (3) to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility;
 - (4) to provide curriculum resources and assessments for financial and economic literacy;
 - (5) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12; and
 - (6) to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy and helps students and their parents to locate and use school and community resources to improve financial and economic literacy among students and families.

R277-704-3. Financial and Economic Literacy Student Passport.

- A. The Board and the USOE shall develop and promote a

financial and economic literacy student passport model, which would include tracking of student progress toward a passport.

- B. Early efforts will focus on students in grades nine through 12.
- C. Development efforts will include parent and community participation.
- D. A major goal of the development and promotion of a financial and economic literacy student passport will be to inform and educate students and their parents throughout the public school experience of the importance of financial and economic literacy and its applicability to all areas of the public school curriculum.
- E. Public schools shall provide parents/guardians and students with the following:
 - (1) during kindergarten enrollment, a financial and economic literacy passport and information about post-secondary education savings options; and
 - (2) information and encouragement toward the financial and economic literacy student passport opportunity upon development as part of the SEOP/plan for college and career readiness process.

R277-704-4. Financial and Economic Literacy Professional Development Opportunities.

- A. The USOE shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups.
- B. Professional development activities shall inform public school educators about financial and economic literacy, encourage greater understanding of personal financial and economic responsibility, provide information and resources for teaching about financial and economic literacy without promoting specific products or businesses, and work with the USOE to develop messaging or advertising to promote financial and economic literacy.

**KEY: financial, economics, literacy
January 8, 2014
Notice of Continuation November 8, 2013**

**Art X Sec 3
53A-13-110
53A-1-401(3)**

R277. Education, Administration.**R277-709. Education Programs Serving Youth in Custody.****R277-709-1. Definitions.**

A. "Accreditation" means the formal process for evaluation and approval under the Standards for the Northwest Accreditation Commission supported by AdvancED.

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

C. "Custody" means the status of being legally subject to the control of another person or a public agency.

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

E. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:

(1) all Board and LEA board graduation requirements;

(2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;

(3) evidence of parent, student, and school representative involvement annually; and

(4) attainment of approved workplace skill competencies.

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

G. "Youth in Custody" means a person defined under Sections 53A-1-403(2)(a) and 62A-15-609 who does not have a high school diploma or a GED certificate.

R277-709-2. 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-1-403(2)(b) which requires the Board to adopt rules for the distribution of funds for the education of youth in custody, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify operation standards, procedures, and distribution of funds for youth in custody programs.

R277-709-3. Student Evaluation, Education Plans, and LEA Programs.

A. Each student meeting the eligibility definition of youth in custody shall have a written SEOP/plan for college and career readiness defining the student's academic achievement, and shall specify known in-school and extra-school factors which may affect the student's school performance.

B. Annually, the student's SEOP/plan for college and career readiness shall be reviewed by the student, school staff and parent/guardian and maintained in the student's file.

C. The program receiving the student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting the evaluation, which may include a special education eligibility evaluation, as quickly as possible so that unnecessary delay in developing a student's education program is avoided.

D. The LEA in which the program resides has the responsibility to conduct Individuals with Disabilities Education Act (IDEA) child find activities within the program, consistent with Utah State Board of Education Special Education Rule II.A.

E. Based upon the results of the student evaluation, an appropriate SEOP/plan for college and career readiness and, as needed, a special education Individualized Education Program (IEP), shall be prepared for each eligible youth in custody. The plan shall be reviewed and updated at least once each year or immediately following transfer of a student from one program to another, whichever is sooner. The plan is developed in cooperation with appropriate representatives of other service agencies working with a student. The plan shall specify the responsibilities of each of the agencies towards the student and

is signed by each agency's representative.

F. All provisions of the IDEA and state special education rules apply to youth in custody programs. Youth in custody programs shall be included in the USOE general supervision monitoring annually.

G. LEA Youth in Custody Programs

(1) The LEA shall provide an education program for the student which conforms as closely as possible to the student's education plan. Educational services shall be provided in the least restrictive environment appropriate for the student's behavior and educational performance.

(2) Youth in custody who do not require educational services or supervision beyond students not in custody shall be considered part of the district's regular enrollment and provided education services.

(3) Youth in custody shall not be assigned to, or remain in, restrictive or non-mainstream programs simply because of their custodial status, past behavior that does not put others at risk, or the inappropriate behavior of other students.

(4) Education programs to which youth in custody are assigned shall meet the standards which are adopted by the Board for that type program. Compliance shall be monitored by the Utah State Office of Education in periodic review visits.

(5) Credit earned in youth in custody programs that are accredited shall be accepted at face value in Utah's public schools consistent with R277-410-9, Transfer or Acceptance of Credit.

(6) Educational services shall be sufficiently coordinated with non-custody programs to enable youth in custody to continue their education with minimal disruption following discharge from custody.

H. Youth in custody shall be admitted to classes within five school days following arrival at a new residential placement. If evaluation and SEOP/plan for college and career readiness or IEP development are delayed beyond that period, the student shall be enrolled temporarily based upon the best information available. The temporary schedule may be modified to meet the student's needs after the evaluation and planning process has been completed.

I. Following a student's release from custody or transfer to a new program, the sending program shall bring all available school records up to date and forward them to the receiving program consistent with Section 53A-11-504.

J. All grades, attendance records and special education SCRAM records shall be maintained in the LEA's SIS system in compliance with R277-484, Data Standards.

R277-709-4. Program Fiscal and Accountability Procedures.

A. State funds appropriated for youth in custody, including the Utah State Hospital, are allocated in accordance with Section 53A-1-403 and Section 62A-15-609.

B. Funds appropriated for youth in custody programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

C. Board Contracts for Youth in Custody Services

(1) the Board shall, through an annually submitted and approved state application/plan, contract with LEAs to provide educational services for youth in custody. The respective responsibilities of the Board, LEAs, and other local service providers for education shall be established in the contract. An LEA may subcontract with local non-district educational service providers for the provision of educational services;

(2) the Board may contract through an RFP process with an appropriate entity only if the Board determines that the LEA where the facility is located is unable or unwilling to provide adequate education services.

(3) Youth in custody students receiving education services by or through an LEA are students of that LEA.

D. State funds appropriated for youth in custody are

allocated on the basis of an annually submitted and approved application made by the LEA where a youth in custody program resides.

E. The share of funds distributed to an LEA is based upon criteria which include the number of youth in custody served by the LEA, the type of program required for the youth, the setting for providing services, and the length of the program.

F. Funds approved for youth in custody projects shall be expended solely for the purposes described in the respective funding application.

G. The USOE may retain no more than five percent of the total youth in custody annual legislative appropriation for administration, oversight, monitoring, and evaluation of youth in custody programs and their compliance with law and this rule.

H. Up to three percent of the five percent of administrative funds allowed under R277-709-4G may be withheld by the USOE and directed to students attending youth in custody programs for short periods of time or to new or beginning youth in custody programs or initiatives benefitting youth in custody students.

I. Funds, state (flow through or state contract) or federal (reimbursement) or both, may be withheld or terminated for noncompliance with state policy and procedures and associated reporting timelines as defined by the Board.

J. The Board or its designee shall develop uniform forms, deadlines, reporting and accounting procedures and guidelines to govern the youth in custody school-based programs and Utah State Hospital funded programs.

R277-709-5. Youth in Custody Programs and Students with Disabilities.

A. The youth in custody program is separate from and not conducted under the state's education program for students with disabilities. Custodial status alone does not qualify a youth in custody student as a student with a disability under laws regulating education for students with disabilities.

B. Youth in custody students may be eligible for special education funding and services based upon special education rules and regulations.

C. Youth in custody students qualifying for special education services shall receive educational instruction as defined in R277-750, Education Programs for Students with Disabilities.

D. Special education procedural safeguards shall apply to all IDEA eligible youth in custody students regardless of instructional location.

E. Special education programs provided through youth in custody programs shall be monitored on an annual basis as defined by special education rules and policies.

R277-709-6. Youth in Custody Program Staffing and Monitoring.

A. Education staff assigned to youth in custody shall be qualified and appropriate for their assignments as defined in R277-503, Licensing Routes.

B. Youth in custody programs shall maintain accreditation as part of the LEA where the programs are located consistent with R277-410, Accreditation of Schools.

C. The USOE shall evaluate youth in custody programs through regular site monitoring visits and monthly desk monitoring, as directed by the USOE.

D. Monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

E. A youth in custody program's failure to resolve audit/monitoring findings as soon as possible, and, in no case, later than one calendar year from date of notice, may result in the termination of state funding as provided in R277-114, Corrective Action and Withdrawal or Reduction of Program

Funds.

F. The USOE may review LEA or State Hospital records and practices for compliance with the law and this rule.

R277-709-7. Utah State Hospital.

A. Funding for the education programs at the Utah State Hospital shall be contingent upon a legislative appropriation.

B. State education contract funds appropriated for State Hospital youth in custody are allocated to the LEA on a reimbursement basis. The State Hospital shall annually submit requests for reimbursement.

C. Funding shall be distributed to the LEA on a reimbursement basis subject to required documentation that supports expenditures.

D. Funds may be withheld or terminated for noncompliance with state and federal policies and procedures and associated reporting requirements and timelines as defined by the USOE.

E. All students qualifying for special education services shall be served by the special education standards defined in R277-750.

F. Staff providing special education services shall comply with all state special education rules, policies and procedures, including SCRAM reporting, child find, assessment and financial accountability, as defined by the Board.

R277-709-8. Youth in Custody/LEA Fiscal Procedures.

A. Ten percent or \$50,000, whichever is less, of state youth in custody funds or educational contract funds (State Hospital) not expended in the current fiscal year may be carried over by eligible LEAs and spent in the next fiscal year with written approval of the USOE.

B. A request to carry over funds shall be submitted for approval by August 1. Approved carry over amounts shall be detailed in a revised budget submitted to the USOE no later than October 1 in the year requested.

C. Excess funds may be considered in determining the LEA's allocation for the next fiscal year.

D. Annually, fund balances in excess of ten percent or \$50,000 shall be recaptured by the USOE no later than February 1 and reallocated to the youth in custody programs based on the criteria and procedures provided by the USOE.

R277-709-9. Program, Curriculum, Outcomes and Student Mastery.

A. Youth in custody programs shall offer courses consistent with the Utah Core standards under R277-700.

B. The Utah core standards and teaching strategies may be modified or adjusted to meet the individual needs of youth in custody students.

C. Course content mastery shall be stressed rather than completion of predetermined seat time in a classroom.

D. Written course descriptions for GED Test preparation shall be made available for youth in custody students who consider pursuing GED Tests as an alternative to traditional Carnegie diploma courses.

R277-709-10. Confidentiality.

A. Transcripts and diplomas prepared for youth in custody shall be issued in the name of an existing LEA which also serves non-custodial youth and shall not bear references to custodial status.

B. School records which refer to custodial status, juvenile court records, and related matters shall be kept separate from permanent school records, but are nonetheless student records if retained by the LEA.

C. Members of the interagency team which design and oversee student education plans shall have access, through team member representatives of the participating agencies, to relevant

records of the various agencies. The records and information obtained from the records remain the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency, the student's legal guardian, or the eligible student under 20 U.S.C. 1232g(d).

D. All information maintained in permanent form on a student from whatever source derived or received, is a student record under the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

E. All confidentiality provisions that pertain to eligible students with disabilities under IDEA apply.

R277-709-11. Coordinating Council.

A. The Department of Human Services and the Board shall appoint a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice Services and the Division of Child and Family Services. The Council shall operate under the guidelines developed and approved by the Department of Human Services and the Board.

B. Council membership shall include a representative of the following:

- (1) Department of Human Services;
- (2) Division of Juvenile Justice Services;
- (3) Division of Child and Family Services;
- (4) Utah State Office of Education;
- (5) Administrative Office of the Courts; and
- (6) a Native American tribe.

R277-709-12. Advisory Councils.

A. Each LEA serving youth in custody shall establish a local interagency advisory council which shall be responsible for advising member agencies concerning coordination of youth in custody programs. Members of the council shall include, if applicable to the LEA, the following:

- (1) a representative of the Division of Child and Family Services;
- (2) a representative of the Division of Juvenile Justice Services;
- (3) directors of agencies located in an LEA such as detention centers, secure lockup facilities, observation and assessment units, and the Utah State Hospital;
- (4) a representative of community-based alternative programs for custodial juveniles; and
- (5) a representative of the LEA.

B. The council shall adopt by-laws for its operation.

C. Local interagency advisory councils shall meet at least quarterly.

KEY: students, education, juvenile courts

January 14, 2014

Notice of Continuation March 12, 2013

Art X Sec 3

53A-1-403(1)

53A-1-401(3)

R305. Environmental Quality, Administration.

R305-1. Records Access and Management.

R305-1-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Department of Environmental Quality.

R305-1-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992, and 63A-12-104 of the Archives and Records Service Act.

R305-1-3. Allocation of Responsibilities within Entity.

(a) Each of the Divisions of the Department of Environmental Quality shall be responsible, regarding records of that Division, for responding to records requests under Part 2 of GRAMA and for responding to appeals under Section 63G-2-401 of GRAMA. The appropriate Division Director is the head of the governmental entity for purposes of 63G-2-401.

(b) The Office of Support Services shall be responsible, regarding records of the Executive Director, for responding to records requests under Part 2 of GRAMA and for responding to appeals under Section 63G-2-401 of GRAMA. The Executive Director is the head of the governmental entity for purposes of 63G-2-401.

R305-1-4. Requests for Access.

Requests for access to records of the following units of the Department of Environmental Quality should be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a reasonably specific description of the records requested. Records access forms may be obtained from any Department or Division records officer.

TABLE
DIVISION OR OFFICE RECORDS OFFICERS AND FUNCTIONS

Division or Office:	Functions:
RECORDS OFFICER Office of Support Services 195 North 1950 West P.O. Box 144810 Salt Lake City, UT 84114-4810	Executive Director personnel, budget, accounting, planning and policy development
RECORDS OFFICER Division of Air Quality 195 North 1950 West P.O. Box 144820 Salt Lake City, UT 84114-4820	Air Quality compliance, planning, and permitting
RECORDS OFFICER Division of Drinking Water 195 North 1950 West P.O. Box 144830 Salt Lake City, UT 84114-4830	Drinking Water permitting, compliance, enforcement, and planning
RECORDS OFFICER Division of Environmental Response and Remediation 195 North 1950 West P.O. Box 144840 Salt Lake City, UT 84114-4840	federal Superfund program, Utah Hazardous Waste Mitigation Program, underground storage tank regulation
RECORDS OFFICER Division of Radiation Control 195 North 1950 West P.O. Box 144850 Salt Lake City, UT 84114-4850	radiological waste management, radiation source licensure, X-ray, uranium mill tailings, and radon
RECORDS OFFICER Division of Solid and Hazardous Waste 195 North 1950 West P.O. Box 144880 Salt Lake City, UT 84114-4880	solid and hazardous waste enforcement, compliance, permitting, and planning
RECORDS OFFICER	water quality planning,

Division of Water Quality compliance, enforcement,
195 North 1950 West and permitting
P.O. Box 144870
Salt Lake City, UT 84114-4870

Response to a request submitted to other persons within the Department of Environmental Quality may be delayed. See Subsections (2) and (7) of 63G-2-204.

R305-1-5. Record Sharing.

The entire Department of Environmental Quality shall be considered a governmental entity for purposes of the record sharing provisions of GRAMA, Section 63G-2-201 (5) (a) and Section 63G-2-206. The provisions of Section 63G-2-206 therefore need not be met if records are shared between Divisions or between a Division and the Office of Administration.

R305-1-6. Fees.

Fees may be charged for copies of records provided. Fees for photocopying will be charged as authorized by Section 63G-2-203. A fee schedule may be obtained from the Department of Environmental Quality by contacting records officers or Office of Support Services, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144810, Salt Lake City, UT 84114-4810. The Department of Environmental Quality may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50.00, or if the requester has not paid fees from previous requests.

R305-1-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203 (3). Requests for this waiver of fees may be made to those persons specified in R305-1-3.

R305-1-8. Requests for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Section 63G-2-202 (8). Requests for access to such records for research purposes may be made to those persons specified in R305-1-3.

R305-1-9. Requests to Amend a Record.

An individual may contest the accuracy of completeness of a document pertaining to the individual pursuant to Section 63G-2-603. Such requests should be made to those persons specified in R305-1-3.

R305-1-10. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal proceedings under the Utah Administrative Procedures Act.

R305-1-11. Time Periods Under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R305-1-12. Disclosure of Business Confidentiality Claims.

Records that are subject to a claim of confidentiality as provided in Section 63G-2-309 shall not be disclosed unless:

- (a) The records are determined to be public and there is no further avenue for appeal; or
- (b) The records are determined to be public and the period in which to bring an appeal or seek intervention has expired.

**KEY: government documents, public records, GRAMA 1993 63G-2-204
Notice of Continuation March 13, 2012**

R307. Environmental Quality, Air Quality.

R307-103. Administrative Procedures.

R307-103-1. Administrative Procedures.

Administrative proceedings under Utah Air Quality Act are governed by Rule R305-7.

**KEY: air pollution, administrative procedures,
administrative proceedings, hearings
August 29, 2011
Notice of Continuation March 4, 2010**

63G-4

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 January 8, 2014, 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
January 9, 2014
Notice of Continuation February 1, 2012**

19-2-104(3)(e)

R307. Environmental Quality, Air Quality.**R307-150. Emission Inventories.****R307-150-1. Purpose and General Requirements.**

(1) The purpose of R307-150 is:

(a) to establish by rule the time frame, pollutants, and information that sources must include in inventory submittals; and

(b) to establish consistent reporting requirements for stationary sources in Utah to determine whether sulfur dioxide emissions remain below the sulfur dioxide milestones established in the State Implementation Plan for Regional Haze, section XX.E.1.a, incorporated by reference in R307-110-28.

(2) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders or operating permits issued prior to December 4, 2003.

(3) Emission inventories shall be submitted on or before ninety days following the effective date of this rule and thereafter on or before April 15 of each year following the calendar year for which an inventory is required. The inventory shall be submitted in a format specified by the Division of Air Quality following consultation with each source.

(4) The executive secretary may require at any time a full or partial year inventory upon reasonable notice to affected sources when it is determined that the inventory is necessary to develop a state implementation plan, to assess whether there is a threat to public health or safety or the environment, or to determine whether the source is in compliance with R307.

(5) Recordkeeping Requirements.

(a) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records under R307-150-4 shall be kept for ten years. Other records shall be kept for a period of at least five years from the due date of each inventory.

(b) The owner or operator of the stationary source shall make these records available for inspection by any representative of the Division of Air Quality during normal business hours.

R307-150-2. Definitions.

The following additional definitions apply to R307-150.

"Acute Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Carcinogenic Contaminant" means any air contaminant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Chronic Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Dioxins" and "Furans" mean total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Emissions unit" means emissions unit as defined in R307-415-3.

"Large Major Source" means a major source that emits or has the potential to emit 2500 tons or more per year of oxides of sulfur, oxides of nitrogen, or carbon monoxide, or that emits or

has the potential to emit 250 tons or more per year of PM₁₀, PM_{2.5}, volatile organic compounds, or ammonia.

"Lead" means elemental lead and the portion of its compounds measured as elemental lead.

"Major Source" means major source as defined in R307-415-3.

R307-150-3. Applicability.

(1) R307-150-4 applies to all stationary sources with actual emissions of 100 tons or more per year of sulfur dioxide in calendar year 2000 or any subsequent year unless exempted in (a) below. Sources subject to R307-150-4 may be subject to other sections of R307-150.

(a) A stationary source that meets the requirements of R307-150-3(1) that has permanently ceased operation is exempt from the requirements of R307-150-4 for all years during which the source did not operate at any time during the year.

(b) Except as provided in (a) above, any source that meets the criteria of R307-150-3(1) and that emits less than 100 tons per year of sulfur dioxide in any subsequent year shall remain subject to the requirements of R307-150-4 until 2018 or until the first control period under the Western Backstop Sulfur Dioxide Trading Program as established in R307-250-12(1)(a), whichever is earlier.

(2) R307-150-5 applies to large major sources.

(3) R307-150-6 applies to:

(a) each major source that is not a large major source;

(b) each source with the potential to emit 5 tons or more per year of lead; and

(c) each source not included in (2) or (3)(a) or (3)(b) above that is located in Davis, Salt Lake, Utah, or Weber Counties and that has the potential to emit 25 tons or more per year of any combination of oxides of nitrogen, oxides of sulfur and PM₁₀, or the potential to emit 10 tons or more per year of volatile organic compounds.

(4) R307-150-7 applies to Part 70 sources not included in (2) or (3) above.

R307-150-4. Sulfur Dioxide Milestone Inventory Requirements.

(1) Annual Sulfur Dioxide Emission Report.

(a) Sources identified in R307-150-3(1) shall submit an annual inventory of sulfur dioxide emissions beginning with calendar year 2003 for all emissions units including fugitive emissions.

(b) The inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, type and efficiency of the air pollution control equipment, percent of sulfur content in fuel and how the percent is calculated, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Each source subject to R307-150-4 that is also subject to 40 CFR Part 75 reporting requirements shall submit a summary report of annual sulfur dioxide emissions that were reported to the Environmental Protection Agency under 40 CFR Part 75 in lieu of the reporting requirements in (1) above.

(3) Changes in Emission Measurement Techniques. Each source subject to R307-150-4 that uses a different emission monitoring or calculation method than was used to report their sulfur dioxide emissions in 2006 under R307-150 or 40 CFR Part 75 shall adjust their reported emissions to be comparable to the emission monitoring or calculation method that was used in 2006. The calculations that are used to make this adjustment shall be included with the annual emission report.

R307-150-5. Sources Identified in R307-150-3(2), Large Major Source Inventory Requirements.

(1) Each large major source shall submit an emission inventory annually beginning with calendar year 2002. The inventory shall include PM10, PM2.5, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, and ammonia for all emissions units including fugitive emissions.

(2) For every third year beginning with 2005, the inventory shall also include all other chargeable pollutants and hazardous air pollutants not exempted in R307-150-8.

(3) For each pollutant specified in (1) or (2) above, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

R307-150-6. Sources Identified in R307-150-3(3).

(1) Each source identified in R307-150-3(3) shall submit an inventory every third year beginning with calendar year 2002 for all emissions units including fugitive emissions.

(a) The inventory shall include PM10, PM2.5, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, ammonia, other chargeable pollutants, and hazardous air pollutants not exempted in R307-150-8.

(b) For each pollutant, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit which is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Sources identified in R307-150-3(3) shall submit an inventory for each year after 2002 in which the total amount of PM10, oxides of sulfur, oxides of nitrogen, carbon monoxide, or volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory. For each pollutant, the inventory shall meet the requirements of R307-150-6(1)(a) and (b).

R307-150-7. Sources Identified in R307-150-3(4), Other Part 70 Sources.

(1) Sources identified in R307-150-3(4) shall submit the following emissions inventory every third year beginning with calendar year 2002 for all emission units including fugitive emissions.

(2) Sources identified in R307-150-3(4) shall submit an inventory for each year after 2002 in which the total amount of PM10, oxides of sulfur, oxides of nitrogen, carbon monoxide, or volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory.

(3) The emission inventory shall include individual pollutant totals of all chargeable pollutants not exempted in R307-150-8.

R307-150-8. Exempted Hazardous Air Pollutants.

(1) The following air pollutants are exempt from this rule if they are emitted in an amount less than that listed in Table 1.

Arsenic	0.21
Benzene	33.90
Beryllium	0.04
Ethylene oxide	38.23
Formaldehyde	5.83

(2) Hazardous air pollutants, except for dioxins or furans, are exempt from being reported if they are emitted in an amount less than the smaller of the following:

(a) 500 pounds per year; or
 (b) for acute contaminants, the applicable TLV-C expressed in milligrams per cubic meter and multiplied by 15.81 to obtain the pounds-per-year threshold; or

(c) for chronic contaminants, the applicable TLV-TWA expressed in milligrams per cubic meter and multiplied by 21.22 to obtain the pounds-per-year threshold; or

(d) for carcinogenic contaminants, the applicable TLV-C or TLV-TWA expressed in milligrams per cubic meter and multiplied by 7.07 to obtain the pounds-per-year threshold.

**KEY: air pollution, reports, inventories
 September 4, 2008
 Notice of Continuation January 28, 2014** 19-2-104(1)(c)

TABLE 1

CONTAMINANT Pounds/year

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part

of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM₁₀, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon

dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air contaminant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements

of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

- (1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);
- (2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and
- (3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

R307-401-19. General Approval Order.

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.

(b) A source that is subject to the requirements of R307-403-5 is not eligible for coverage under a general approval order.

(c) A source that is subject to the requirements of R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-4 was conducted.

(d) A source that is subject to the requirements of R307-410-5(1)(c)(ii) or (iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of R307-401-8.

(3) The public notice requirements in R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval

order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of all stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under R307-401-8. Cases where an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard; or

(v) the director determines that one is required based on the compliance history and current compliance status of the source or applicant.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under R307-401-5 and receiving an individual approval order under R307-401-8.

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized under previous versions of the general approval order unless the owner or operator submits an application to be covered under the new version of the general approval order. Modifications under R307-401-19(7)(b) shall meet the public notice requirements in R307-401-19(3).

(c) A general approval order shall be reviewed at least every three year. The review of the general approval order shall follow the public notice requirements of R307-401-19(3).

(8) Modifications at a source covered by a general approval order. A source may make modifications only as authorized by

R307. Environmental Quality, Air Quality.**R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).****R307-405-1. Purpose.**

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

- (1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, 2011.
- (2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated by reference.
- (3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2) and (9) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(b) "Reviewing Authority" means the director.

(c)(i) The term "Administrator" shall be changed to "director" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

- (A) 40 CFR 52.21(b)(17),
- (B) 40 CFR 52.21(b)(37)(i),
- (C) 40 CFR 52.21(b)(43),
- (D) 40 CFR 52.21(b)(48)(ii)(c),
- (E) 40 CFR 52.21(b)(50)(i),
- (F) 40 CFR 52.21(l)(2),
- (G) 40 CFR 52.21(p)(2), and
- (H) 40 CFR 51.166(q)(2)(iv).

(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 major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21(b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(e) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses

under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (d) through (e) of this section.

(b) For purposes of paragraphs (c) through (e) of this section, the term "tons per year (tpy) CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO₂e.

(c) The term "emissions increase" as used in paragraphs (d) through (e) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21 (a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,

(e) Beginning July 1, 2011, in addition to the provisions in paragraph (d) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

- (a) Arches National Park,
- (b) Bryce Canyon National Park,
- (c) Canyonlands National Park,
- (d) Capitol Reef National Park, and
- (e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

(3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g), that is hereby incorporated by reference.

R307-405-6. Ambient Air Increments.

The provisions of 40 CFR 52.21(c) are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.

The provisions of 40 CFR 52.21(d) are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not

renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

(a) impact a Class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to a violation of the national ambient air quality standards.

R307-405-9. Stack Heights.

The provisions of 40 CFR 52.21(h) are hereby incorporated by reference.

R307-405-10. Exemptions.

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5) are hereby incorporated by reference.

R307-405-11. Control Technology Review.

The provisions of 40 CFR 52.21(j) are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.

The provisions of 40 CFR 52.21(k) are hereby incorporated by reference.

R307-405-13. Air Quality Models.

The provisions of 40 CFR 52.21(l) are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3) are hereby incorporated by reference.

R307-405-15. Source Information.

The provisions of 40 CFR 52.21(n) are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.

The provisions of 40 CFR 52.21(o) are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.

(1) The provisions of 40 CFR 52.21(p) are hereby incorporated by reference.

(2) The director will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2) are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.

The provisions of 40 CFR 52.21(r) are hereby incorporated

by reference.

R307-405-20. Innovative Control Technology.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v) are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The director shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(aa) are hereby incorporated by reference.

(2) (a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "June 16, 2006".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the director must identify them in either the Utah SIP or an order. The director will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

KEY: air pollution, PSD, Class I area, greenhouse gases
February 2, 2012 **19-2-104**
Notice of Continuation January 28, 2014

R309. Environmental Quality, Drinking Water.**R309-511. Hydraulic Modeling Requirements.****R309-511-1. Purpose.**

The purpose of this rule is to ensure that the increased water demand created by new construction will not adversely affect existing or new water users. This will be accomplished by requiring the public water system or its agent to evaluate the water delivery system using a hydraulic model and by certifying to the Director that the project will not adversely impact the system. It is intended that the public water system or its agent will use the findings of the hydraulic model to design improvements providing satisfactory service to both existing and new water users. This rule requires the public water system or its agent to certify that the design meets minimum flow requirements of R309-510 and pressure requirements as set forth in rule R309-105-9.

R309-511-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-511-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

"The public water system or its agent" is the individual responsible for signing the certification and preparing the Hydraulic Modeling Design Elements Report. This individual shall be a registered professional engineer, licensed to practice in the State of Utah.

R309-511-4. General.**(1) Rule Applicability.**

(a) This rule applies to public drinking water systems categorized as community water systems as defined by rule R309-100-4(2), and to non-transient non-community water systems that have system demands higher than required by R309-510 or with demands for fire suppression. All public drinking water systems are still required to comply with R309-550-5 with respect to water main design, which may require a hydraulic analysis. Submission of the Hydraulic Model Report, as defined in R309-511-7 and 8, is not required for projects meeting one of the following criteria:

(i) public drinking water projects that will not result in negative hydraulic impact, such as, but not limited to;

(A) addition of new sources in accordance with R309-515;

(B) adding disinfection, fluoridation, or other treatment facilities that do not adversely impact flow, pressure or water quality;

(C) storage tank repair or recoating;

(D) water main additions with no expansion of service (e.g., looping lines);

(E) adding transmission lines to storage or sources without adding service connections;

(F) adding pump station(s) from source or storage upstream of distribution service connections; or,

(G) public drinking water projects that have negligible hydraulic impact as determined by the Director.

(ii) public drinking water projects that are a part of a planned phase of a master plan previously approved by the Director per R309-500-6(3)(a);

(iii) the water system maintains and updates a hydraulic model of the system, and has designated a professional engineer responsible for overseeing the hydraulic analysis in meeting the requirements of R309-511 in writing to the Director; or,

(iv) the water system has a means that is deemed acceptable by the Director to gather real-time data indicative of

hydraulic conditions in model scenarios of R309-511-5(9), and the real-time data show the system is capable of meeting the flow and pressure requirements for the additional demands placed on the existing system.

(b) Professional Engineer's certification of the hydraulic modeling results, as defined in R309-511-4(2)(c) and R309-511-6(1), shall be part of the submission of plans for any public drinking water project as defined in R309-500-5(1) except for the projects listed under R309-511-4(1)(a)(i).

(c) A public water system must clearly identify the reason in the plan submittal if it wishes to demonstrate that R309-511 does not apply to a new construction project. In some cases, supporting documentation may be needed.

(d) If there are existing deficiencies in the water system, the Director may allow a new construction project to proceed in accordance with the plan review requirements in R309-500 through 550 as long as the public water system demonstrates that the new construction project is located in a hydraulically separated area and does not adversely impact the existing deficiencies, or does not create new deficiencies within the water system.

(2) Rule Elements.

The public water system or its agent, in connection with the submission of plans and specifications to the Director, shall perform the following:

(a) conduct a hydraulic modeling evaluation consistent with the requirements as set forth in this rule and R309-510. This model shall include either the entire public drinking water system or the specific areas affected by the new construction if hydraulically separated areas exist within the water system;

(b) calibrate the model using field measurements and observations;

(c) certify in writing to the Director that the design complies with the sizing requirements of R309-510 and the minimum water pressures of R309-105-9;

(d) prepare and submit a Hydraulic Model Design Elements Report (see R309-511-7); and,

(f) prepare a System Capacity and Expansion Report if required (see R309-511-8).

R309-511-5. Requirements for the Hydraulic Model.

The following minimum requirements must be incorporated into hydraulic models that are constructed to meet these requirements:

(1) include at least 80 percent of the total pipe lengths in the distribution system affected by the proposed project;

(2) account for 100 percent of the flow in the distribution system affected by the proposed project. Water demand allocation must account for at least 80 percent of the flow delivered by the distribution system affected by the proposed project if customer usage in the system is metered;

(3) include all 8-inch diameter and larger pipes. Pipes smaller than 8-inch diameter shall also be included if they connect pressure zones, storage facilities, major demand areas, pumps, and control valves, or if they are known or expected to be significant conveyers of water such as fire suppression demand. Model piping does not need to include service lateral piping;

(4) include all pipes serving areas at higher elevations, dead ends, remote areas of a distribution system, and areas with known under-sized pipelines;

(5) include all storage facilities and accompanying controls or settings applied to govern the open/closed status of the facility that reflect standard operations;

(6) if applicable, include all pump stations, drivers (constant or variable speed), and accompanying controls or settings applied to govern their on/off/speed status that reflect various operating conditions and drivers;

(7) include all control valves or other system features that

could significantly affect the flow of water through the distribution system (e.g., interconnections with other systems and pressure reducing valves between pressure zones) reflecting various operating conditions;

(8) impose peak day and peak instantaneous demands to the water system's facilities. These demands may be peak day and peak instantaneous demands per R309-510, the reduced demand approved by the Director per R309-510-5, or the demands experienced by the water system that are higher than the values listed in R309-510. This may require multiple model simulations to account for the varying water demand conditions. In some cases, extended period simulations are needed to evaluate changes in operating conditions over time. This will depend on the complexity of the water system, extent of anticipated fire event and nature of the new expansion;

(9) calibrate the model to adequately represent the actual field conditions using field measurements and observations;

(10) if fire hydrants are connected to the distribution system, account for fire suppression requirements specified by local fire authority or use the default values stated in R309-510-9(4). For significant fire suppression demand, extended simulations must contain the run time for the period of the anticipated fire event. In some cases, a steady-state model may be sufficient for residential fire suppression demand; and,

(11) account for outdoor use, such as irrigation, if the drinking water system supplies water for outdoor use.

R309-511-6. Elements of the Public Water System or Its Agent's Certification.

(1) The public water system or its agent's certification.

The Director relies upon the professional judgment of the registered professional engineer who certifies that the hydraulic analysis and evaluation have been done properly and that the flow and pressure requirements have been met. The public water system or its agent shall, after a thorough review, submit a document to the Director certifying that the following requirements have been met:

(a) the hydraulic model requirements as set forth in rule R309-511-5;

(b) the appropriate demand requirements as specified in this rule and rule R309-510 have been used to evaluate various operating conditions of the public drinking water system;

(c) the hydraulic model predicts that new construction will not result in any service connection within the new expansion area not meeting the minimum distribution system pressures as specified in R309-105-9;

(d) the hydraulic model predicts that new construction will not decrease the pressures within the existing water system such that the minimum distribution system pressures are not met, as specified in R309-105-9;

(e) the calibration methodology is described and the model is sufficiently accurate to represent conditions likely to be experienced in the water delivery system; and,

(f) identify the hydraulic modeling method, and if computer software was used, the software name and version used.

(2) The format of the public water system or its agent's submission.

The public water system or its agent shall submit to the Director the following documentation:

(a) the certification as required in R309-511-6(1). The certification shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah;

(b) a Hydraulic Model Design Elements Report (see R309-511-7). The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah; and,

(c) for community public water systems, the water system management shall certify that they have received a copy of input

and output data for the hydraulic model with the simulation showing the worst case results in terms of water system pressure and flow.

(3) The submission of supporting documentation.

The public water system or its agent shall submit a System Capacity and Expansion Report (see R309-511-8) if requested by the Director. The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

R309-511-7. Hydraulic Model Design Elements Report.

The public water system or its agent shall prepare a Hydraulic Model Design Elements Report along with, and in support of, the certification stated in R309-511-6(1). The Hydraulic Model Design Elements Report shall contain, but is not limited to, the following elements:

(1) if the public drinking water system provides water for outdoor use, the report must describe the criteria used to estimate this demand. If the irrigation demand map in R309-510-7(3) is not used, the report shall provide justification for the alternative demands used in the model. If the irrigation demands are based on the map in R309-510-7(3) the report must identify the irrigation zone number, a statement and/or map of how the irrigated acreage is spatially distributed, and the total estimated irrigated acreage. The indicated irrigation demands must be used in the model simulations;

(2) the total number of connections served by the water system including existing connections and anticipated new connections served by the water system after completion of the construction of the project;

(3) the total number of equivalent residential connections (ERC) including both existing connections as well as anticipated new connections associated with the project. The number of ERCs must include high as well as low-volume water users. The determination of the ERCs shall be based on flow requirements using the anticipated demand as outlined in R309-510, or based on alternative sources of information that are deemed acceptable by the Director;

(4) the methodology used for calculating demand and allocating it to the model; a summary of pipe length by diameter; a hydraulic schematic of the distribution piping showing pressure zones, general pipe connectivity between facilities and pressure zones, storage, elevation and sources; and a list or ranges of values of the friction coefficient used in the hydraulic model according to pipe material and condition in the system. All coefficients of friction used in the hydraulic analysis shall be consistent with standard practices;

(5) a statement stating either "yes fire hydrants exist or will exist within the system" or "there are no fire hydrants connected to the system and there is no plan to add fire hydrants with this project." Either statement will require the identification of the local fire authority's name, address, and contact information, as well as the fire flow quantity and duration if required;

(6) the locations of the lowest pressures within the distribution system, and areas identified by the hydraulic model as not meeting each scenario of the minimum pressure requirements in R309-105-9; and,

(7) calibration method and quantitative summary of the calibration results (e.g., comparison tables, graphs).

R309-511-8. System Capacity and Expansion Report.

The public water system or its agent may be required to prepare a System Capacity and Expansion Report along with a Hydraulic Model Design Elements Report, as specified above, in support of the certification. It is intended that the System Capacity and Expansion Report be prepared, maintained, and used by the public water system's management to make informed decisions about its capability to provide water service

to future customers and need only be submitted to the Division if requested by the Director. The System Capacity and Expansion Report shall consist of the elements described in R309-110-4 under the definition of "Master Plan" and shall be updated if significant growth or changes to the water system have occurred.

KEY: drinking water, hydraulic modeling
January 21, 2014

19-4-104

R309. Environmental Quality, Drinking Water.**R309-515. Facility Design and Operation: Source Development.****R309-515-1. Purpose.**

This rule specifies requirements for public drinking water sources. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water that consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-515-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-515-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-515-4. General.**(1) Issues to be Considered.**

The selection, development, and operation of a public drinking water source must be done in a manner that will protect public health and assure that all required water quality standards, as described in R309-200, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed, and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems serving more than 100 connections shall have a minimum of two sources, except where served by a surface water treatment plant. For all systems, the total developed source capacity shall equal or exceed the peak day demand of the system. Refer to R309-510-7 of these rules for procedure to estimate the peak day demand.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Director that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-200 can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) all the primary and secondary inorganic contaminants listed in R309-200, Table 200-1 and Table 200-5 (excluding Asbestos unless it would be required by R309-205-5(2));

(b) Ammonia as N; Boron; Calcium; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, micro mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO₂; Surfactant as MBAS; Total Hardness as CaCO₃; and Alkalinity as CaCO₃;

(c) pesticides, PCBs and SOCs as listed in R309-200-5(3)(a), Table 200-2 unless the system is a transient non-community PWS or, if a community PWS or non-transient non-community PWS, has received waivers in accordance with R309-205-6(1)(f). The following six constituents have been excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothal, glyphosate and Dioxin;

(d) VOCs as listed in R309-200-5(3)(b), Table 200-3

unless the system is a transient non-community PWS; and,

(e) radiologic chemicals as listed in R309-200-5(4) unless the system is a non-transient non-community PWS or a transient non-community PWS.

All analyses shall be performed by a certified laboratory as required by R309-205-4 (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-505-7(1)(a)(i) provides information on the classification of water sources. The Director shall classify all existing or new sources as either:

(a) surface water or ground water under direct influence of surface water which requires conventional surface water treatment or an approved equivalent; or as,

(b) ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Director prior to source approval.

R309-515-5. Surface Water Sources.**(1) Definition.**

A surface water source, as is defined in R309-110, shall include, but not be limited, to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells that have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Director.

(2) Pre-design Submittal.

The following information must be submitted to the Director and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) a copy of the chemical analyses required by R309-200 and described in R309-515-4(5) above; and,

(b) a survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs;

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies;

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes;

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water;

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards; and,

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) acceptable evidence that the water system has a legal right to divert water for the proposed uses from the proposed sources;

(b) minimum quantity that the surface water source is capable of producing (see R309-515-5(4)(a) below); and

(c) complete plans and specifications and supporting documentation for the proposed treatment facilities to ascertain

compliance with R309-525 or R309-530.

(4) Quantity.

The quantity of water from surface sources shall:

(a) be assumed to be no greater than the low flow of a 25-year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) meet or exceed the anticipated peak day demand for water as estimated in R309-510-7 and provide a reasonable surplus for anticipated growth; and,

(c) be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal, which would be anticipated in the normal operation of the treatment facility.

(5) Diversion Structures.

Design of intake structures shall provide for:

(a) withdrawal of water from more than one level if quality varies with depth;

(b) intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) separate facilities for release of less desirable water held in storage;

(d) occasional cleaning of the inlet line;

(e) a diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and,

(f) suitable protection of pumps where used to transfer diverted water (refer to R309-540-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) removal of brush and trees to the high water level;

(b) protection from floods during construction;

(c) abandonment of all wells, which may be inundated (refer to applicable requirements of the Division of Water Rights); and,

(d) adequate precautions to limit nutrient loads.

R309-515-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination concerning whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers shall assess the capability of their system in the event of a power outage. If a community water system has no naturally flowing water sources such as springs or flowing wells, one or more of the system's sources shall be equipped for operation during power outages. In this event:

(a) to ensure continuous service when the primary power has been interrupted, a redundant power supply shall be provided. A redundant power supply may include a transfer switch for auxiliary power such as a generator or a power supply service with coverage from two independent substations.

(b) when automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line shall be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office. For public drinking water supply wells, the rules of R655-4 apply and shall be followed in addition to these rules.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the

requirements of R309-600. Sources shall be located in an area that will minimize threats from existing or potential sources of pollution.

Generally, sewer lines may not be located within zone one and zone two of a public drinking water system's source protection zones. However, if the following precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zone one and zone two. Sewer lines shall meet the conditions identified in R309-600-13(3), and shall be specially constructed as follows throughout zone one in aquifers classified as protected, and zones one and two, if the aquifer is classified as unprotected.

(a) Sewer lines shall be constructed to remain watertight. The lines shall be deflection-tested in accordance with the Division of Water Quality Rule R317-3. The lines shall be video-inspected for any defect following completion of construction and before being placed in service. The sewer pipe material shall be:

(i) high density polyethylene (HDPE) pipe with a PE3408 or PE4710 rating from the Plastic Pipe Institute and have a Dimension Ratio (DR) of 17 or less, and all joints shall be fusion-welded; or,

(ii) polyvinyl chloride (PVC) pipe meeting AWWA Specification C900 or C905 and have a DR of 18 or less. PVC pipe shall be either restrained gasketed joints or shall be fusion-welded. Solvent cement joints shall not be acceptable. The PVC pipe shall be clearly identified when installed, by marking tape or other means as a sanitary sewer line; or,

(iii) ductile iron pipe with ceramic epoxy lining, polyethylene encasement, restrained joints, and a minimum pressure class of 200.

(b) Procedures for leakage tests shall be specified and comply with Division of Water Quality Rule R317-3 requirements.

(c) Lateral to main connection shall be fusion-welded, shop-fabricated, or saddled with a mechanical clamping watertight device designed for the specific pipe.

(d) Inlet and outlet sewer pipes shall be joined to a manhole with a gasketed flexible watertight connection.

(e) The sewer pipe shall be laid with no greater than 2 percent deflection at any joint.

(f) Backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690.

(g) Sewer manholes shall meet the following requirements.

(i) The manholes shall be constructed of reinforced concrete.

(ii) Manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be fabricated in a single concrete pour without joints.

(iii) The manholes shall be air pressure tested after installation.

(h) In unprotected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone two. In protected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone one.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600-13, and

(ii) engineering plans and specifications governing the well drilling, prepared by a licensed well driller holding a current Utah Well Drillers License or prepared, signed, and stamped by a licensed professional engineer or professional geologist licensed to practice in Utah.

(b) Inspection of Well Sealing During Construction.

(i) Authorized Individuals

(A) The following individuals are authorized to witness the well sealing procedure for a public drinking water well:

(I) an engineer or a geologist from the Division of Drinking Water;

(II) a district engineer of the Department of Environmental Quality;

(III) an authorized representative of the Division of Water Rights; or,

(IV) an individual having written authorization from the Director and meeting the below listed criteria.

(B) At the time of the well sealing an individual, who is authorized per (i)(A)(IV), shall present to the well driller a copy of the letter authorizing him or her to witness a well sealing on behalf of the Division of Drinking Water. A copy of this letter shall be appended to the witness certification letter.

(C) At least three days before the anticipated well sealing, the well driller shall arrange for an authorized witness listed in (i)(A) above to witness the procedure. (See R309-515-6(6)(i)).

(ii) Obtaining Authorization

(A) To be authorized per (i)(A)(IV) above to witness a well sealing procedure, an individual must have no relationship to the driller or the well's owner. The individual must have at least five years professional experience designing wells, supervising well drilling or other equivalent experience associated with well drilling or well sealing that is acceptable to the Director.

(B) Individuals, desiring the Director's authorization to witness a well sealing procedure, shall provide the following information to the Director for review over his or her signature attesting to the correctness of the information:

(I) a detailed description of the applicant's experience with well drilling projects, including number of years of experience and type of work. Three references confirming this professional experience are required.

(II) evidence of licensure as a professional engineer or professional geologist in Utah.

(III) no relationship may exist between a person authorized to witness well sealings and a well driller that would serve as the basis for suspicion of favoritism, leniency, or punitive action in the performance of this task. Examples of such relationships would be family; former long-term employment associations; business partnerships, either formal or informal; etc. The Director's decision, with right of appeal as provided in R305-7, shall be accepted relative to what constitutes a conflict of interest or a relationship sufficient to disqualify an applicant from all or specific witness opportunities.

(IV) An acknowledgement that he/she would not be acting as an agent or employee of the State of Utah and any losses incurred while acting as a witness would not be covered by governmental immunity or Utah's insurance.

(V) Willingness to follow established protocols and attend such training events as may be required by the Director.

(VI) Complete with a minimum 75 percent passing grade, an examination on water well drilling rules, as offered by the Division of Water Rights.

(C) The Director may rescind the authorization if an individual fails to comply with the criteria or conditions of authorization listed above.

(iii) Well Seal Certification

The individual witnessing the well sealing procedure shall provide a signed letter, including the following information, to the Director within 30 days of the well sealing:

(A) certification that the well sealing procedure met all the requirements of Rule R309-515-6(6)(i);

(B) the water right under which the well was drilled and the well driller's license number;

(C) the public water system name (if applicable);

(D) the latitude and longitude of the well and method used

for its determination;

(E) the well head's approximate elevation;

(F) casing diameter(s), length(s), and material(s);

(G) the size of the annulus between the borehole and casing;

(H) a description of the sealing process including the sealing material used, its volume, density, method of placement, and depth from surface; and,

(I) the names and company affiliations of other individuals observing the sealing procedure including, but not limited to, the well driller, the well owner, and/or a consultant.

(c) After completion of the well drilling, the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the authorized individual described in R309-515-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the aquifer drawdown test data, as a minimum, including the yield versus drawdown test data, as described in R309-515-6(10)(b) along with comments and interpretation by a licensed professional engineer or licensed professional geologist of the graphic drawdown information required by R309-515-6(10)(b)(vi)(E);

(iv) a copy of the chemical analyses required by R309-515-4(5);

(v) acceptable evidence that the water system owner has a legal right to divert water for the proposed use(s) from the well source(s);

(vi) a copy of complete plans and specifications prepared, signed, and stamped by a licensed professional engineer covering the well housing, equipment, and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection, and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-500-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design, and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 6 found in R655-4-11.2.3 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted April 11, 2011, Division of Water Rights);

(ii) have additional thickness and weight, if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;
 (v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding, the top of the well casing shall terminate at least three feet above the 100-year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Director based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet AWWA Standard A100-06 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake, or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances, or bacterial contamination to the well water. Lead or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and,

(v) be provided with a bottom plate or wash-down bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications; and,

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally, wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be located, as far as practical, to permit the uniform collection of water around the circumference of the well casing; and,

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Well Sealing Techniques and Requirements.

For all public drinking water wells, the annulus between the outermost well casing and the borehole wall shall be sealed with grout to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Director (see R309-500-4(1)). If more than one casing is used, including a conductor casing, the annulus between the outermost casing and the next inner casing shall be sealed with grout (meeting the sealing materials requirements of R309-515-6(i)(ii) herein) or with a water tight steel ring having a thickness equal to that of the permanent well casing and continuously welded to both casings. If a public drinking water well will be equipped with

a pitless adapter or unit, a well seal shall be installed to a minimum depth of 110 feet to take into account the top 10 feet of compromised seal interval.

The following shall apply to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the outermost permanent casing and the drilled hole, taking into consideration any joint couplings.

(B) The casing(s) must be placed to permit unobstructed flow and uniform thickness of grout.

(ii) Sealing Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two-inch openings. Additives may be used to increase fluidity subject to approval by the Director.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement, may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available, a seal of swelling bentonite meeting the requirements of R655-4-11.4.2 may be used when approved by the Director.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings shall be removed prior to or during the well sealing operation. Any exceptions shall be approved by the State Engineer's Office, and evidence of State Engineer's Office's approval shall be submitted to the Director (see R655-4-11.4.3.1 for conditions concerning leaving temporary surface casing in place). A temporary construction casing is a casing not intended to be part of the permanent well.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600-6(1)(x)).

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set, usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to produce a 100 mg/l free chlorine residual in accordance with R655-4-11.6.5.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material shall be of well-rounded particles, at least 90 percent siliceous material, no more than five percent acid solubility, smooth and uniform, free of foreign material, properly sized, washed, and then disinfected immediately prior to or during placement;

(ii) the gravel pack shall be placed in one uniform continuous operation;

(iii) refill pipes, when used, shall be Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron;

(iv) refill pipes located in the grouted annular opening shall be surrounded by a minimum of 1.5 inches of grout;

(v) protection shall be provided to prevent leakage of grout into the gravel pack or screen; and,

(vi) any casings not withdrawn entirely shall meet requirements of R309-515-6(6)(b) or R309-515-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud, or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used, the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) The well shall be securely capped in accordance with R655-4-14.1 until permanent equipment can be installed.

(b) At all times during the progress of work, the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources, which will be permanently abandoned shall be abandoned in accordance with R655-4-14.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned well is filled with cement-grout or concrete, these materials shall be applied to the well-hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after well development and prior to placement of the permanent pump;

(ii) have the test methods clearly indicated in the specifications;

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of the desired design discharge rate;

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to the desired design discharge rate;

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve);

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing);

(C) depth of test pump intake; and,

(D) time and date of starting and ending test(s);

(vi) For the "constant-rate" test, provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required

below:

(A) record the time since starting test (in minutes);

(B) record the actual pumping rate;

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level);

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth);

(E) provide graphic evaluation on semi-logarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale; and,

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(c) Safe Yield.

If the aquifer drawdown test data show that the drawdown has stabilized, the Director will consider 2/3 of the pumping rate used in the constant-rate test as the safe yield of the well. The safe yield is used to determine the number of permanent residential connections or ERCs that a well source can support.

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standards C654-03 and A100-06 as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and the equipment installed in the well. This solution shall remain in the well for a period of at least eight hours; and,

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves;

(ii) be provided with permanent casing and sealed by grout; and,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Director.

(b) Well Pumps.

(i) The design discharge rate of the well pump shall not exceed the rate used during the constant-rate aquifer drawdown test.

(ii) Wells equipped with line shaft pumps shall:

(A) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base;

(B) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing;

(C) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation; and,

(D) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7) and/or R309-515-8(2) for additional requirements of lubricants).

(iii) Where a submersible pump is used:

(A) the top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables;

(B) the electrical cable shall be firmly attached to the riser pipe at 20-foot intervals or less; and,

(C) the intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(c) Pitless Well Units and Adapters.

If the excavation surrounding the well casing allowing installation of the pitless unit compromises the surface seal, the competency of the surface seal shall be restored. Torch-cut holes in the well casing shall be to neat lines closely following the outline of the pitless adapter and completely filled with a competent weld with burrs and fins removed prior to the installation of the pitless unit and adapter.

Pitless well units and adapters shall:

(i) be used to make a connection to a water well casing that is made below the ground. A below-the-ground connection shall not be submerged in water during installation;

(ii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation, whichever is greater;

(iii) contain a label or have a certification indicating compliance with the Water Systems Council Pitless Adapter Standard (PAS-97);

(iv) have suitable access to the interior of the casing in order to disinfect the well;

(v) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables;

(vi) have suitable access so that measurements of static and pumped water levels in the well can be obtained;

(vii) allow at least one check valve within the well casing;

(viii) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage;

(ix) be shop-fabricated from the point of connection with the well casing to the unit cap or cover;

(x) be of watertight construction throughout;

(xi) be constructed of materials at least equivalent to and having wall thickness compatible to the casing;

(xii) have field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection;

(xiii) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit is to connect the pitless unit to the casing; and,

(xiv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(d) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low;

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided;

(iii) be protected against the entrance of contamination;

(iv) be equipped with a smooth-nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow, and a shutoff valve (with the smooth-nosed sampling tap being the first item from the well head and the shut-off valve as the last item), unless it is a naturally flowing well which may need an alternative design;

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the well house floor and covered with a No. 14 mesh corrosion

resistant screen. An air release vacuum relief valve is not required if the specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system;

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing;

(vii) be properly anchored to prevent movement;

(viii) be properly protected against surge or water hammer; and,

(ix) if a pump to waste line exists, it shall not be connected to a sewer/storm drain without a minimum 12-inch clearance to the flood rim, and the discharge end of the pump-to-waste line shall be downturned and covered with a No. 4 mesh corrosion resistant screen (refer to R309-545-10(1)).

(e) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed, it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed to prevent entrance of foreign materials.

(f) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well; and,

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(g) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a "drain-to-daylight" sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed, the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Director.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least three feet above the 100-year flood level or the highest known flood elevation, whichever is higher (refer to R309-515-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated, and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540-5(2) (a) through (h)).

(f) Fencing.

Where necessary to protect the quality of the well water, the Director may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

R309-515-7. Ground Water - Springs.

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be under the direct influence of surface water shall comply with surface water treatment requirements.

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring shall only be made after consideration of the requirements of R309-515-4. Springs must be located in an area that shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-600-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Director. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-515-6(4).

(3) Surface Water Influence.

Some springs yield water that has been filtered underground for years; other springs yield water that has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be under the direct influence of surface water, it shall be treated to meet the surface water treatment requirements specified in R309-505-6.

(4) Pre-construction Submittal

Before beginning spring development construction, the following information shall be submitted to the Director and approved in writing:

- (a) detailed plans and specifications covering the development work;
- (b) if available, a copy of an engineer's or geologist's statement indicating:
 - (i) the historical record of spring flow variation;
 - (ii) expected minimum flow and the time of year it will occur;
 - (iii) expected maximum flow and the time of year it will occur;
 - (iv) expected average flow and,
 - (v) the behavior of the spring during drought conditions;
- (c) acceptable evidence that the water system has a legal right to divert water for the proposed use(s) from the spring source(s);
- (d) a Preliminary Evaluation Report on source protection issues as required by R309-600-13;
- (e) a copy of the chemical analyses required by R309-515-4(5); and,
- (f) an assessment of whether the spring is under the direct influence of surface water (refer to R309-505-7(1)(a)).

(5) Information Required after Spring Development.

After development of a spring as a drinking water source, the following information shall be submitted to the Director for review.

- (a) proof of satisfactory bacteriologic quality;
- (b) information on the rate of flow developed from the spring.

Immediately after spring development, the water system shall collect monthly spring flow data during operating seasons when the spring is reasonably accessible, as a minimum, for three years, and submit spring flow data to the Director for

determination of spring yield. After evaluating the spring flow information including seasonal and annual variations, the Director will determine a spring yield, which will be used in assessing the number of and type of connections that can be served by the spring. The spring yield typically is set at the 25th percentile of the spring flow data. If the spring exhibits significant seasonal or annual variations, the spring yield may be assessed on a case-by-case basis.

(c) Record drawings of spring development.

(6) Operating Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, as evidenced by the issuance of an Operating Permit by the Director (see R309-500-9).

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements.

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes, or tunnels must be covered with a minimum of 10 feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the 10 feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

- (i) the liner has a minimum thickness of at least 40 mils;
- (ii) all seams in the liner are folded or welded to prevent leakage;
- (iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner;
- (iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner;
- (v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner; and,
- (vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-545 with respect to access openings, venting, and tank overflow. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-110). In remote areas where no grazing or public access is possible, an exception to the fencing requirement may be granted by the Director. In populated areas, a six-foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation having deep roots shall be removed by a means not negatively affecting water quality.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow-measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible to minimize the possibility of excess spring water ponding

within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain, and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

R309-515-8. Operation and Maintenance.

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep-rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Director. Such approval can be granted only when:

- (i) acceptable pesticides are proposed
- (ii) the pesticide product manufacturer certifies that no harmful substance will be imparted to the water and,
- (iii) spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Director.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Director. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

KEY: drinking water, source development, source maintenance

January 21, 2014

19-4-104

Notice of Continuation March 22, 2010

R357. Governor, Economic Development.**R357-7. Utah Capital Investment Board.****R357-7-1. Purpose.**

(1) The purpose of these rules is to establish the manner by which the Utah Capital Investment Board (UCIB) conducts its affairs.

R357-7-2. Authority.

(1) UCA 63M-1-1206 requires the UCIB to make rules establishing the manner by which it conducts its affairs.

R357-7-3. Conduct.

The UCIB conducts its affairs to best meet its objectives of mobilizing venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The UCIB conducts its affairs in a way to meet these objectives by:

(1) Making staff available to present potential tax credit agreements to the UCIB and Utah Capital Investment Corporation (UCIC) for approval;

(2) Reviewing and approving or denying potential agreements with financial entities within ninety (90) days of presentation to the UCIB;

(3) If approved by the UCIB, issuing contingent tax credit certificates to designated investors for the allocation and issuance of contingent tax credits;

KEY: economic development, capital investments

January 24, 2014

63M-1-1206

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-101. Title.

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

R359-1-102. Definitions.

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV, Hepatitis B or C;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

(h) providing false or misleading information to the Commission or a representative of the Commission;

(i) behaving at any time or place in a manner which is deemed by the Commission to reflect discredit to unarmed combat;

(j) engaging in any activity or practice that is detrimental to the best interests of unarmed combat;

(k) knowing that an unarmed contestant suffered a serious injury prior to a contest or exhibition and failing or refusing to inform the Commission about that serious injury.

(l) conviction of a felony or misdemeanor, except for minor traffic violations.

(7) A "training facility" is a location where ongoing, scheduled training of unarmed combat contestants is held.

R359-1-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

R359-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R359-1-101 through R359-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R359-1-601 through R359-1-623 shall apply only to contests of boxing, as defined in Subsection R359-1-102(1).

The provisions of Sections R359-1-701 through R359-1-702 shall apply only to elimination tournaments, as defined in R359-1-102(4). The provisions of Section R359-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Section 859-1-901 shall apply only to "White-Collar Contests". The provisions of Sections R359-1-1001 through R359-1-1004 shall apply only to grants for amateur boxing.

R359-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, timekeeper, manager, contestant, second, matchmaker, referee, or judge.

(2) A licensed amateur contestant shall not compete against a professional unarmed combat contestant, or receive a purse, or a percentage of ticket sales, and/or other remuneration (other than for reimbursement for reasonable travel expenses and per diem, consistent with IRS guidelines).

(3) A licensed manager or contestant shall not referee or judge any event or contestant affiliated with a gym or training facility they have been involved with during the past 12 months.

(4) A promoter shall not hold a license as a referee, judge, second or contestant.

R359-1-302. Licensing - Procedure.

In accordance with the authority granted in Section 63C-11-309, the expiration date for licenses issued by the Commission shall be one year from the date of issuance.

R359-1-401. Designation of Adjudicative Proceedings.

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for renewal of a license;

(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:

(a) approval or denial of applications for initial licensure;

(b) approval or denial of applications for reinstatement of a license; and

(c) protests against the results of a match.

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

R359-1-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R359-1-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.

(5) The Commission shall be designated as the sole

presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to serve as the fact finder at evidentiary hearings.

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair of the Commission.

R359-1-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing. The Commission shall convene the hearing as soon as is reasonably practical but not later than 20 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

R359-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.

R359-1-405. Reconsideration and Judicial Review.

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Utah Administrative Procedures Act or seek judicial review of the order pursuant to Sections 63-46b-14 through 63-46b-17.

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site

emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000, or total sum of the contestant purses, officials fees and estimated commission fees, whichever is greater. Promoters who have held less than 5 unarmed combat events in the state of Utah shall deposit an additional \$10,000 minimum Cashier's Check or Bank Draft with the commission no later than 7 days prior to the event or the event may be cancelled by the commission.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the funds necessary for payment of contestants, referees, judges, timekeeper and the attending physician(s). The designated Commission member shall pay each contestant, referee, and judge in the presence of one witness.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) The promoter shall be responsible for payment of any commission fee(s) deducted from a contestant's purse, if the fees are not collected directly from the contestant at the conclusion of the bout or if the contestant fails to compete in the event.

(11) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance coverage for each insured contestant in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest or exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care for injuries sustained during a contest or exhibition, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter shall also provide life insurance coverage of \$10,000 for each contestant in case of death resulting from injuries sustained during a contest or exhibition.

(d) The required medical insurance and life insurance coverage shall not be waived by the contestant or any other party.

(e) A contestant seeking medical insurance reimbursement for injuries sustained during an unarmed combat event shall obtain medical treatment for their injuries within 72 hours of their bout and maintain written records of their treatment, expenses and correspondence with the insurance provider and promoter to ensure coverage.

(f) The promoter shall not delay or circumvent the timely

processing of a claim submitted by a contestant injured during a contest or exhibition.

(12) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a) The event attendance fee established in the adopted fee schedule on the date of the event.

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of internet, broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000. These fees shall be paid to the commission within 45 days of the event. The promoter shall notify and provide the commission with certified copies of any contracts, agreements or transfers of any internet, broadcasting, television, and motion picture rights for any contest or exhibition within seven days of any such agreements. The commission may require a surety deposit be provided to the commission to ensure these requirements are met.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper, if not previously paid by the promoter.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

(ii) attraction of the optimum number of spectators;

(iii) costs of promoting and producing the contest or exhibition;

(iv) ticket pricing;

(v) committed promotions and advertising of the contest or exhibition;

(vi) rankings and quality of the contestants; and

(vii) committed television and other media coverage of the contest or exhibition.

(viii) contribution to a 501(c)(3) charitable organization.

R359-1-502. Ringside Equipment.

(1) Each promoter shall provide all of the following:

(a) commission-approved gloves in whole, clean and in sanitary condition for each contestant;

(b) stools for use by the seconds;

(c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;

(d) a stretcher, which shall be available near the ring and near the ringside physician;

(e) a portable resuscitator with oxygen;

(f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;

(g) seats at ringside for the assigned officials;

(h) seats at ringside for the designated Commission member;

(i) ring (cage) cleaning supplies, including bucket, towels and disinfectant;

(j) a public address system;

(k) a separate dressing room for each sex, if contestants of both sexes are participating;

(l) a separate room for physical examinations;

(m) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(n) adequate security personnel; and

(o) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the county, city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms, for physical examinations or weigh-ins.

R359-1-503. Contracts.

(1) Pursuant to Section 63C-11-320, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R359-1-504. Complimentary Tickets.

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

(i) the Commission members, Director and representatives;

(ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and

(iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter

is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

- (ii) Employees of the Commission;
- (iii) A journalist who is performing a journalist's duties; and
- (iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R359-1-505. Physical Examination - Physician.

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

- (a) eyes;
- (b) teeth;
- (c) jaw;
- (d) neck;
- (e) chest;
- (f) ears;
- (g) nose;
- (h) throat;
- (i) skin;
- (j) scalp;
- (k) head;
- (l) abdomen;
- (m) cardiopulmonary status;
- (n) neurological, musculature, and skeletal systems;
- (o) pelvis; and
- (p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall

prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

R359-1-506. Drug Testing.

In accordance with Section 63C-11-309, the following shall apply to drug testing:

(1) The administration of or use of any:

- (a) Alcohol;
- (b) Illicit drug;
- (c) Stimulant; or
- (d) Drug or injection that has not been approved by the

Commission, including, but not limited to, the drugs or injections listed R359-1-506(2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug or substance identified on the 2012 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2012 edition of the Prohibited List may be obtained, free of charge, at www.wada-ama.org.

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

- (a) Aspirin and products containing aspirin.
- (b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceryl.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1) or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a licensee shall submit to a test of body fluids to determine the presence of drugs or other prohibited substances. A licensee shall give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a prohibited substance or metabolite or if the licensee is unable or unwilling to provide a sample of body fluids for such a test within 60 minutes of notification, the Commission may take one or more of the following actions:

(a) immediately suspend the licensee's license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-303; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-303.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest" and shall be fined a minimum of their win bonus.

(8) Unless the commission determines otherwise at a scheduled meeting, a licensee who tests positive for prohibited substances or their metabolites shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(d) Failure by the contestant to fully disclose all medications taken within 30 days of their pre-fight physical, prior to their bout, shall be deemed unprofessional conduct and double the length of any applicable suspension.

(10) Therapeutic Use Exemptions (TUEs).

(a) An applicant or licensee who believes he or she has a therapeutic reason to use a substance described in R359-1-

506(2) may request a Therapeutic Use Exemption (TUE) to permit continued use of that substance. Such a request may only be granted by the commission itself after a public hearing. The applicant or licensee shall submit the request in writing to the commission. The request shall be accompanied by supporting medical information sufficient to allow the commission to determine whether to grant their request. In reaching its decision, the commission will, at a minimum, determine whether all of the following criteria have been met:

(i) The applicant or licensee would experience a significant impairment to health if the prohibited substance were to be withheld in the course of treating an acute or chronic medical condition;

(ii) The therapeutic use of the prohibited substance would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition;

(iii) The Use of any Prohibited Substance or Prohibited Method to increase "low-normal" levels of any endogenous hormone is not considered an acceptable Therapeutic intervention;

(iv) Either reasonable therapeutic alternatives to the use of the otherwise prohibited substance have been tried or no reasonable alternative exists; and

(v) The necessity for the use of the otherwise prohibited substance is not a consequence, wholly or in part, of a prior non-therapeutic use of any substance described in R359-1-506(2).

(b) The commission may, in its sole discretion, either grant or deny the request or refer the request to the Voluntary Anti-Doping Association (VADA) or similar evaluating body for a recommendation. The evaluating body shall obtain such evaluation and expert consultation as the body deems necessary. The evaluating body shall present the commission with a written recommendation and a detailed basis for that recommendation.

(c) The applicant shall be responsible to pay any costs associated with the TUE evaluation and all subsequent mandated compliance testing.

(d) The TUE shall be cancelled, if:

(i) The contestant does not promptly comply with any requirements or conditions imposed by the commission.

(ii) The term for which the TUE was granted has expired.

(iii) The contestant is advised that the TUE has been withdrawn by the commission.

(11) Failure to disclose the use of a substance described in Rule R359-1-506(2) constitutes unprofessional conduct and subject to additional disciplinary action under Section 63C-11-303.

R359-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest. The period may be reduced by the commission to protect public safety in the event of an outbreak.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-509. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretionary use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretionary use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of Monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R359-1-510. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges,

timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(2) Event officials are prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an event official shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an event official who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

(3) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(4) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(5) The Judges, Referee(s) and Timekeeper officiating at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the Commission approves to officiate in a contest or exhibition.

(7) Event Officials' Minimum Fee Schedule:

TABLE			
NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER
1-5	\$100.00	\$50.00	\$35.00
>5	\$100.00	\$100.00	\$50.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

R359-1-512. Announcer.

(1) The promoter may select the event announcer.

(2) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(3) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(4) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

(3) An announcer shall not engage in unprofessional conduct.

(4) The announcer is prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an announcer shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate

sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an announcer who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

- (i) First offense - 180 day prohibition from participating in unarmed combat events.
- (ii) Second offense - 1 year prohibition from participating in unarmed combat events.
- (iii) Third offense - 2 year prohibition from participating in unarmed combat events.

R359-1-513. Timekeeper.

- (1) A timekeeper shall indicate the beginning and end of each round by the gong.
- (2) A timekeeper shall possess a whistle and a stopwatch.
- (3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.
- (4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.
- (5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R359-1-514. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

- (1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:
 - (a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.
 - (b) one-sided nature of the contest;
 - (c) refusal or inability of a contestant to reasonably compete; and
 - (d) refusal or inability of a contestant to comply with the rules of the contest.
- (2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.
- (3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

R359-1-515. Competing in an Unsanctioned Unarmed Combat Event.

- (1) The Commission shall deny issuing a license to a contestant who has competed in an unarmed combat event not sanctioned by an Association of Boxing Commission (ABC) member commission for a period of 60 days from the date of the event.
- (2) Unarmed combat contestants who are currently licensed by the Commission shall not be approved to compete in an unarmed combat event until 60 days from the date of their last competition in an unarmed combat event not sanctioned by an ABC member commission.
- (3) After competing in an unsanctioned unarmed combat event, a contestant must submit new blood tests results drawn within 30 days of their scheduled event.

R359-1-601. Boxing - Contest Weights and Classes.

- (1) Boxing weights and classes are established as follows:
 - (a) Strawweight: up to 105 lbs. (47.627 kgs.)
 - (b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)
 - (c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)
 - (d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)
 - (e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)
 - (f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)
 - (g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)
 - (h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)
 - (i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)
 - (j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)
 - (k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)
 - (l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)
 - (m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)
 - (n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)
 - (o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)
 - (p) Cruiserweight: over 175 to 200 lbs. (79.378 to 90.80 kgs.)
 - (q) Heavyweight: all over 200 lbs. (90.80 kgs.)
- (2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.
- (3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in order to be reweighed.
- (4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:
 - (a) the win-loss record of the contestants;
 - (b) the weight differential;
 - (c) the caliber of opponents;
 - (d) each contestant's number of fights; and
 - (e) previous suspensions or disciplinary actions.

R359-1-602. Boxing - Number of Rounds in a Bout.

- (1) A contest bout shall consist of not less than four and not more than twelve scheduled rounds. Three minutes of boxing shall constitute a round for men's boxing, and two minutes shall constitute a round for women's boxing. There shall be a rest period of one minute between the rounds.
- (2) A promoter shall contract with a sufficient number of contestants to provide a program consisting of at least 30 and not more than 56 scheduled rounds of boxing, unless otherwise approved by the Commission.

R359-1-603. Boxing - Ring Dimensions and Construction.

- (1) The ring shall be square, and the sides shall not be less than 16 feet nor more than 22 feet. The ring floor shall extend

not less than 18 inches beyond the ropes. The ring floor shall be padded with a base not less than 5/8 of an inch of ensolite or another similar closed-cell foam. The padding shall extend beyond the ring ropes and over the edge of the platform, and shall be covered with canvas, duck, or a similar material that is tightly stretched and laced securely in place.

(2) The ring floor platform shall not be more than four feet above the floor of the building, and shall have two sets of suitable stairs for the use of contestants, with an extra set of suitable stairs to be used for any other activities that may occur between rounds. Ring posts shall be made of metal and shall be not less than three nor more than four inches in diameter, extending a minimum of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.

(3) The ring shall not have less than four ring ropes which can be tightened and which are not less than one inch in diameter. The ring ropes shall be wrapped in a soft material. The turnbuckles shall be covered with a protective padding. The ring ropes shall have two spacer ties on each side of the ring to secure the ring ropes. The lower ring rope shall be 18 inches above the ring floor. The ring shall have corner pads in each corner.

R359-1-604. Boxing - Gloves.

(1) A boxing contestant's gloves shall be examined before a contest by the referee and the designated Commission member. If gloves are found to be broken or unclean or if the padding is found to be misplaced or lumpy, they shall be changed before the contest begins.

(2) A promoter shall be required to have on hand an extra set of gloves that are to be used if a contestant's gloves are broken or damaged during the course of a contest.

(3) Gloves for a main event may be put on in the ring after the referee has inspected the bandaged hands of both contestants.

(4) During a contest, male contestants shall wear gloves weighing not less than eight ounces each if the contestant weighs 147 lbs. (66.678 kgs.) or less. Contestants who weigh more than 147 lbs. (66.678 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

R359-1-605. Boxing - Bandage Specification.

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

R359-1-606. Boxing - Mouthpieces.

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in

the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

R359-1-607. Boxing - Contest Officials.

(1) The officials for each boxing contest shall consist of not less than the following:

- (a) one referee;
- (b) three judges;
- (c) one timekeeper; and
- (d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaird view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

R359-1-608. Boxing - Contact During Contests.

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

R359-1-609. Boxing - Referees.

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall

summon the contestants and their chief seconds together for final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

R359-1-610. Boxing - Stalling or Faking.

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

R359-1-611. Boxing - Injuries and Cuts.

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the

scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(9) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(10) A contestant shall not refuse to be examined by a physician.

(11) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(12) A physician shall file a written report with the Commission on each contestant who has been knocked out or injured.

R359-1-612. Boxing - Knockouts.

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(3) The timekeeper shall signal the count to the referee.

(4) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(5) If at the end of a round a boxing contestant is down and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(6) In the final round, the timekeeper's gong shall terminate the fight.

(7) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(8) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(9) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

R359-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R359-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has

submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

R359-1-614. Boxing - Waiting Periods.

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

Length of Bout (In scheduled Rounds)	Required Interval (In Days)
4	3
5-9	5
10-12	7

R359-1-615. Boxing - Fouls.

(1) A referee may disqualify or penalize a boxing contestant by deducting one or more points from a round for the following fouls:

- (a) holding an opponent or deliberately maintaining a clinch;
- (b) hitting with the head, shoulder, elbow, wrist, inside or butt of the hand, or the knee.
- (c) hitting or gouging with an open glove;
- (d) wrestling, spinning or roughing at the ropes;
- (e) causing an opponent to fall through the ropes by means other than a legal blow;
- (f) gripping at the ropes when avoiding or throwing punches;
- (g) intentionally striking at a part of the body that is over the kidneys;
- (h) using a rabbit punch or hitting an opponent at the base of the opponent's skull;
- (i) hitting on the break or after the gong has sounded;
- (j) hitting an opponent who is down or rising after being down;
- (k) hitting below the belt line;
- (l) holding an opponent with one hand and hitting with the other;
- (m) purposely going down without being hit or to avoid a blow;
- (n) using abusive language in the ring;
- (o) un-sportsmanlike conduct on the part of the boxing contestant or a second whether before, during, or after a round;
- (p) intentionally spitting out a mouthpiece;
- (q) any backhand blow; or
- (r) biting.

R359-1-616. Boxing - Penalties for Fouling.

(1) A referee who penalizes a boxing contestant pursuant to this Rule shall notify the judges at the time of the infraction to deduct one or more points from their scorecards.

(2) A boxing contestant committing a deliberate foul, in addition to the deduction of one or more points, may be subject to disciplinary action by the Commission.

(3) A judge shall not deduct points unless instructed to do so by the referee.

(4) The designated Commission member shall file a complaint with the Commission against a boxing contestant disqualified on a foul. The Commission shall withhold the purse until the complaint is resolved.

R359-1-617. Boxing - Contestant Outside the Ring Ropes.

(1) A boxing contestant who has been knocked, wrestled, pushed, or has fallen through the ropes during a contest shall not be helped back into the ring, nor shall the contestant be hindered in any way by anyone when trying to reenter the ring.

(2) When one boxing contestant has fallen through the ropes, the other contestant shall retire to the farthest neutral corner and stay there until ordered to continue the contest by the referee.

(3) The referee shall determine if the boxing contestant has fallen through the ropes as a result of a legal blow or otherwise. If the referee determines that the boxing contestant fell through the ropes as a result of a legal blow, he shall warn the contestant that the contestant must immediately return to the ring. If the contestant fails to immediately return to the ring following the warning by the referee, the referee shall begin the count that shall be loud enough to be heard by the contestant.

(4) If the boxing contestant enters the ring before the count of ten, the contest shall be resumed.

(5) If the boxing contestant fails to enter the ring before the count of ten, the contestant shall be considered knocked out.

(6) When a contestant has accidentally slipped or fallen through the ropes, the contestant shall have 20 seconds to return to the ring.

R359-1-618. Boxing - Scoring.

(1) Officials who score a boxing contest shall use the 10-point must system.

(2) For the purpose of this Rule, the "10-point must system" means the winner of each round received ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The loser of the round shall receive less than ten points. If the round is even, each boxing contestant shall receive not less than ten points. No fraction of points may be given.

(3) Officials who score the contest shall mark their cards in ink or in indelible pencil at the end of each round.

(4) Officials who score the contest shall sign their scorecards.

(5) When a contest is scored on the individual score sheets for each round, the referee shall, at the end of each round, collect the score sheet for the round from each judge and shall give the score sheets to the designated Commission member for computation.

(6) Referees and judges shall be discreet at all times and shall not discuss their decisions with anyone during a contest.

(7) A decision that is rendered at the termination of a boxing contest shall not be changed without a hearing, unless it is determined that the computation of the scorecards of the referee and judges shows a clerical or mathematical error giving the decision to the wrong contestant. If such an error is found, the Commission may change the decision.

(8) After a contest, the scorecards collected by the designated Commission member shall be maintained by the Commission.

(9) If a referee becomes incapacitated, a time-out shall be called and the other referee who is assigned to the contest shall assume the duties of the referee.

(10) If a judge becomes incapacitated and is unable to complete the scoring of a contest, a time-out shall be called and an alternate licensed judge shall immediately be assigned to score the contest from the point at which he assumed the duties

of a judge. If the incapacity of a judge is not noticed during a round, the referee shall score that round and the substitute judge shall score all subsequent rounds.

R359-1-619. Boxing - Seconds.

(1) A boxing contestant shall not have more than four seconds, one of whom shall be designated as the chief second. The chief second shall be responsible for the conduct in the corner during the course of a contest. During the rest period, one second shall be allowed inside the ring, two seconds shall be allowed on the apron and one second shall be allowed on the floor.

(2) All seconds shall remain seated during the round.

(3) A second shall not spray or throw water on a boxing contestant during a round.

(4) A boxing contestant's corner shall not heckle or in any manner annoy the contestant's opponent or the referee, or throw any object into the ring.

(5) A second shall not enter the ring until the timekeeper has indicated the end of a round.

(6) A second shall leave the ring at the timekeeper's whistle and shall clear the ring platform of all obstructions at the sound of the gong indicating the beginning of a round. Articles shall not be placed on the ring floor until the round has ended or the contest has terminated.

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R359-1-609(6) and R359-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

(8) A second may indicate to the referee that the second's boxing contestant cannot continue and that the contest should be stopped. Only verbal notification or hand signals may be used; the throwing of a towel into the ring does not indicate the defeat of the second's boxing contestant.

(9) A second shall not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the progress of a contest.

R359-1-620. Boxing - Managers.

A manager shall not sign a contract for the appearance of a boxing contestant if the manager does not have the boxing contestant under contract.

R359-1-621. Boxing. Identification - Photo Identification Cards.

(1) Each boxing contestant shall provide two pieces of identification to the designated Commission member before participation in a fight. One of the pieces of identification shall be a recent photo identification card issued or accepted by the Commission at the time the boxing contestant receives his original license.

(2) The photo identification card shall contain the following information:

(a) the contestant's name and address;

(b) the contestant's social security number;

(c) the personal identification number assigned to the contestant by a boxing registry;

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

(3) The Commission shall honor similar photo identification cards from other jurisdictions.

(4) Unless otherwise approved by the Commission, a boxing contestant will not be allowed to compete if his or her photo identification card is incomplete or if the boxing contestant fails to present the photo identification card to the designated Commission member prior to the bout.

R359-1-622. Boxing - Dress for Contestants.

(1) Boxing contestants shall be required to wear the following:

(a) trunks that are belted at the contestant's waistline. For the purposes of this Subsection, the waistline shall be defined as an imaginary horizontal line drawn through the navel to the top of the hips. Trunks shall not have any buckles or other ornaments on them that might injure a boxing contestant or referee;

(b) a foul-proof protector for male boxing contestants and a pelvic area protector and breast protector for female boxing contestants;

(c) shoes that are made of soft material without spikes, cleats, or heels;

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R359-1-604.

(2) In addition to the clothing required pursuant to Subsections R359-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

(3) A boxing contestant's hair shall be cut or secured so as not to interfere with the contestant's vision.

(4) A boxing contestant shall not wear corrective lenses other than soft contact lenses into the ring. A bout shall not be interrupted for the purposes of replacing or searching for a soft contact lens.

R359-1-623. Boxing - Failure to Compete.

A boxing contestant's manager shall immediately notify the Commission if the contestant is unable to compete in a contest due to illness or injury. A physician may be selected as approved by the Commission to examine the contestant.

R359-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R359-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the sport. Upon requesting the Commission's approval of an elimination tournament in this State, the sponsoring organization or promoter of an elimination tournament may submit the official rules for the particular sport to the Commission and request the Commission to apply the official rules in the contest.

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

(1) An elimination tournament must begin and end within a period of 48 hours.

(2) All matches shall be scheduled for no more than three rounds. A round must be one minute in duration.

(3) A contestant shall wear 16 oz. boxing gloves, training headgear, a mouthpiece and a large abdominal groin protector during each match.

(4) A contestant may participate in more than one match, but a contestant shall not compete more than a total of 12

rounds.

(5) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of contestants, a physical examination on each contestant, conducted by a physician not more than 60 days prior to the elimination tournament in a form provided by the Commission, certifying that the contestant is free from any physical or mental condition that indicates the contestant should not engage in activity as a contestant.

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R359-1-507 of this Rule and Subsection 63C-11-317(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

R359-1-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R359-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the art. Upon requesting the Commission's approval of a contest or exhibition of a martial art in this State, the sponsoring organization or promoter may submit the official rules for the particular art to the Commission and request the Commission to apply the official rules in the contest or exhibition.

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-802. Martial Arts Contest Weights and Classes.

Martial Arts Contest Weights and Classes:

(a) flyweight is up to and including 125 lbs. (56.82 kgs.);

(b) bantamweight is over 125 lbs. (56.82 kgs.) to 135 lbs. (61.36 kgs.);

(c) featherweight is over 135 lbs (61.36 kgs.) to 145 lbs. (65.91 kgs.);

(d) lightweight is over 145 lbs. (65.91 kgs.) to 155 lbs. (70.45 kgs.);

(e) welterweight is over 155 lbs. (70.45 kgs.) to 170 lbs. (77.27 kgs.);

(f) middleweight is over 170 lbs. (77.27 kgs.) to 185 lbs. (84.09 kgs.);

(g) light-heavyweight is over 185 lbs. (84.09 kgs.) to 205 lbs. (93.18 kgs.);

(h) heavyweight is over 205 lbs. (93.18 kgs.) to 265 lbs. (120.45 kgs.); and

(i) super heavyweight is over 265 lbs. (120.45 kgs.).

R359-1-901. "White-Collar Contests".

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

(4) A ringside physician (M.D. or D.O) must be present at the ringside or cageside during each bout and emergency

medical response must be within 5 minutes to the training center venue.

(5) Ticket sales, admission fees and/or donations are prohibited.

(6) Concession sales are prohibited.

(7) No more than 4 bouts at an event on a single day are permitted.

(8) Knee strikes to the head to a standing or grounded opponent are prohibited.

(9) Elbow, forearm and triceps strikes to a standing or grounded opponent are prohibited.

(10) Strikes to the head of a grounded opponent are prohibited.

(11) All twisting leg submissions are prohibited.

(12) All spine attacks, including spine strikes and locks are prohibited.

(13) All neck attacks, including strikes, chokes and cranks are prohibited.

(14) Linear kicks to and around the knee joint are prohibited.

(15) Dropping your opponent on his or her head or neck at any time is prohibited.

(16) Medical insurance coverage for each contest participant that meets the requirements of R359-1-501(10) shall be provided at no expense to the contest participant.

(17) Full legal names, birthdates and addresses of all contestants shall be provided to the commission no later than 72 hours before the scheduled event.

R359-1-1001. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R359-1-1002. Definitions.

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of monies as authorized under Section 63C-11-311(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

R359-1-1003. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

(a) submit an application in a form prescribed by the Commission;

(b) provide documentation that the applicant is an "organization which promotes amateur boxing in the State";

(c) Upon request from the Commission, document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) receipts for expenditures for which the applicant requests reimbursement.

(2) Reimbursable Expenditures - The applicant may

request reimbursement for the following types of eligible expenditures:

(a) costs of travel, including meals, lodging and transportation associated with participation in an amateur boxing contest for coaches and contestants;

(b) Maintenance costs; and

(c) Equipment costs.

(3) Eligible Expenditures - In order for an expenditure to be eligible for reimbursement, an applicant must:

(a) submit documentation supporting such expenditure to the Commission showing that the expense was incurred during the State Fiscal Year at issue; and

(b) submit such documentation no later than June 30 of the current State Fiscal Year at issue.

(4) the Commission will review applicants and make a determination as to which one(s) will best promote amateur boxing in the State of Utah.

R359-1-1004. Criteria for Awarding Grants.

The Commission may consider any of the following criteria in determining whether to award a grant:

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

(2) the applicant's past participation in amateur boxing contests;

(3) the scope of the applicant's current involvement in amateur boxing;

(4) demonstrated need for the funding; or

(5) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

KEY: licensing, boxing, unarmed combat, white-collar contests

January 24, 2014

63C-11-101 et seq.

Notice of Continuation March 30, 2012

R362. Governor, Energy Development (Office of).**R362-2. Renewable Energy Systems Tax Credits.****R362-2-1. Purpose.**

(A) This rule implements the responsibilities assigned to the Utah Governor's Office of Energy Development (OED) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(C) This rule also establishes procedures for taxpayers to use when applying for OED certification of tax credit eligibility and tax credit amounts, and for OED to follow in reviewing such applications.

(D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R362-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the OED and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, the OED is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or producing energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the OED may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, the OED may also establish rules defining the reasonable costs of a system.

R362-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;

b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and

c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

a. material from a plant or tree; or

b. other organic matter that is available on a renewable basis, including:

i. slash and brush from forests and woodlands;

ii. animal waste;

iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;

iv. aquatic plants; and

v. agricultural products.

2. A biomass system does not include:

a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants

b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to \$50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange

equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or the Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8. This can include ground source heat pumps, water source heat pumps using ground water or surface water, and direct geexchange heat pump systems.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10- 1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and
2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10- 1106(2)(b) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7- 614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;
2. Biomass except for systems combusting biomass for heat;
3. Direct-use geothermal;
4. Geothermal electricity
5. Geothermal heat pump;
6. Hydroenergy;
7. Passive solar for heating or cooling;
8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to \$2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable

of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

(Y) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(Z) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R362-2-4. Investment Tax Credit Certification Process.

(A) OED is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by OED to gather information necessary to implement this rule.

(C) OED will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, OED reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, OED may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, OED finds that a renewable energy system is eligible for a residential or commercial tax credit, OED will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only OED may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of OED's evaluation of an application, OED will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;
2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or
3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If OED denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;
2. The tax identification number or numbers of persons seeking a tax credit;
3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit OED staff to locate the site for on-site verification of the information in the application.
4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use,

energy production capacity, cost, date of completed installation, and other information specified in this rule.

(H). Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that OED staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.

2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.

3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow OED to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R362-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of \$50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$50,000 for any single commercial unit.

(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of \$2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same residential unit, however, the total of all credits awarded may not exceed \$2,000.

(C) Eligible costs for equipment are generally limited to system components that are both:

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end-use; and

2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax

credit.

(F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or

2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) OED may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R362-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R362-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat

transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems." The applicant can demonstrate to OED that the solar thermal system meets standards that are equivalent to those of the SRCC Document OG-300 by providing:

1. Detailed engineering design and performance data that show system performance, or

2. Certification from other recognized National or European solar thermal testing labs.

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

<http://tredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>;

2. Fixed, non-glazed collectors shall be:

a. Oriented within 45 degrees of true south if the fixed pitch is greater than 30 degrees from horizontal, or

b. Oriented within 90 degrees of true south if the fixed pitch is 30 degrees or less from horizontal.

3. Fixed, glazed collectors shall be oriented within:

a. 115 degree azimuth and 245 degree azimuth if the fixed pitch is greater than 35 degrees from horizontal, or

b. 90 degree azimuth and 270 degrees if the fixed pitch is 35 degrees or less from horizontal.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);

2. A Utah licensed solar hot water contractor (S215 license); or

3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than \$0.15 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

<http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel active solar thermal system exceeds \$0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than \$0.27 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

<http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$0.27 x rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$0.27 x rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel solar thermal system exceeds \$0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED after investigation as to the validity

of the waiver claim.

R362-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(A) All eligible costs for solar PV energy systems must conform with Section R362-2-5, above. Solar PV energy systems must also meet the requirements in this Section.

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);
2. Inverter;
3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries;
2. Battery wiring;
3. Charge controllers; and
4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:

1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:

<http://www.gosolarcalifornia.org/equipment/index.html>; or

2. The applicant can demonstrate to OED that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:

1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:

<http://www.gosolarcalifornia.org/equipment/index.html>; or

2. The applicant can demonstrate to OED that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of \$2,500 for the

purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:

1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;

2. Positioned so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:

<http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>);

3. Positioned such that the fixed solar array azimuth shall be oriented within:

a. 115 degrees and 245 degrees if the fixed pitch is greater than 35 degrees from horizontal, or

b. 90 degrees and 270 degrees if the fixed pitch is 35 degrees or less from horizontal.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:

1. A Utah licensed electrical contractor (S200);

2. A Utah licensed solar photovoltaic contractor (S202);

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or

4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$5 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$5 \times$ rated output capacity in watts) - rebates) \times 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$5 \times$ rated output capacity in watts) - rebates) \times 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$10 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$10 \times$ rated output capacity in watts) - rebates) \times 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $((\$10 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.10$

R362-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:

1. A means to allow the solar energy to enter the system;
2. A heat-absorbing surface;
3. A thermal storage mass located within the conditioned space;
4. A heat transferal system or mechanism and;
5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:

1. Trombe wall;
2. Water wall;
3. Thermosyphon;
4. Equipment or building shell components providing direct heat gain; and
5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U-factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:

1. For a non-loaded structure, 100% of the cost may be eligible;
2. For a loaded structure, 50% of the cost may be eligible;
3. Notwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit is calculated.

(G) No tax credit shall be given if OED concludes that the

passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R362-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R362-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

1. Listed and certified by the Small Wind Certification Council in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: <http://www.smallwindcertification.org/certified-turbines/>
2. The applicant can demonstrate to OED that the turbine meets standards that are equivalent to those of the Small Wind Certification Council as of calendar year 2007.

(C) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid-connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:
 - a. Buildings;
 - b. Utility poles or overhead utility lines;
 - c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.
2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:
 - a. Trees or other vegetation;
 - b. Buildings and other structures;
 - c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that OED can verify appropriate siting. OED also reserves the right to conduct a site visit to verify appropriate siting.

(F) Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than \$8 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$8 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = $((\$8 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$8 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $((\$8 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.10$

R362-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R362-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;
2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or
3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or
4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Accredited Installer" by the International Ground Source Heat Pump Association (IGSHPA).

5. For direct geoechange systems, a person designated as a certified designer by an AHRI accredited direct geoechange systems manufacturer.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either

ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a non-production well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the eligible cost of a geothermal heat pump system is considered to be no higher than \$6,500 per ton of output capacity for residential systems and \$5,500 per ton of output capacity for commercial systems for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$6,500 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = $((\$6,500 \times \text{rated output capacity in tons}) - \text{rebates}) \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$5,500 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $((\$5,500 \times \text{rated output capacity in tons}) - \text{rebates}) \times 0.10$

3. If the cost of a geothermal heat pump system exceeds \$6,500(residential) or \$5,500(commercial) per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED and OED after investigation as to the validity of the waiver claim.

R362-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R362-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible

components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R362-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater

than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights. Proof of driller qualifications and well right may be required on the tax credit application.

R362-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R362-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;
2. Generator;
3. Rectifier;
4. Inverter;
5. Penstocks;
6. Penstock ventilation;
7. Buck and boost transformer;
8. Valves;
9. Drains;
10. Diversion structures (with the exception of storage dams, fish facilities, and canals);
11. Screened intake device; and
12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;
2. Battery temperature sensors;
3. Charge controller and necessary wiring and disconnects;
4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a hydroenergy system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R362-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;
2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;
3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);
4. Engines or turbines used to power generators;
5. Generators;
6. Inverters;
7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(F) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to OED for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;
2. Wind energy systems; or
3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to OED:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;
2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;
3. A description of the commercial energy system

including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;

4. Information on the location of the commercial energy system sufficient to permit site inspection by OED staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;

5. Photographs of key and/or representative components of the commercial energy system;

6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;

7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, OED staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. OED may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) OED will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, OED will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63G, Chapter 4 (Administrative Procedures Act), upon its decision to grant or deny a certification request, OED will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R362-2-16. Granting of Production Tax Credits.

(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, OED must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to OED information regarding the following:

1. The date that the commercial energy system first entered commercial service;
2. The beginning and ending dates of the company's tax year;

3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by OED.

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to OED invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. OED will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, OED will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;
2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;
3. The number of kilowatts deemed to be valid;
4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) A company claiming a production tax credit must submit the information specified above to OED on or before the date the tax return on which the credit is claimed is required to be filed with the State Tax Commission. Once OED has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either OED or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If OED denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC 63G-2-305(1) and/or UC 63G-2-305(2) when the applicant provides OED with a written claim of confidentiality and a concise statement supporting the claim, consistent with UC 63G-2-309(1)(a)(i). OED shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.

KEY: energy, renewable, tax credits, solar

January 22, 2014

Notice of Continuation August 30, 2012

59-7-614

59-10-1014

59-10-1106

R380. Health, Administration.**R380-70. Standards for Electronic Exchange of Clinical Health Information.****R380-70-1. Purpose and Authority.**

This rule governs electronic information exchanges between health care providers, laboratories, and third party payers. It is authorized by Sections 26-1-30 and 26-1-37.

R380-70-2. Definitions.

The terms defined in Utah Code 26-1-37 apply to this rule and the standards adopted by this rule. In addition, the following terms apply to this rule and the standards adopted by this rule:

- (1) "Clinical health information" means data gathered on patients regarding episodes of clinical health care.
- (2) "Clinical laboratory" means a laboratory that performs laboratory testing on humans (except research) in the U.S.
- (3) "Health care provider" has the same meaning as used in Utah Code Section 26-1-37 and includes an entity, such as a clinic, employer, or other business arrangement, where an individual licensed under Title 58, Occupations and Professions, provides health care.

R380-70-3. Terms Used in Standards.

Some terms used in this rule and the standards adopted by this rule are nationally recognized terms within the clinical data exchange community. The following are provided as an aid to the reader:

- (1) Health care information codes
 - (a) "ASA Codes" are the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.
 - (b) "CDT Codes" are the Current Dental Terminology prescribed by the American Dental Association.
 - (c) "CPT Codes" means the Current Procedural Terminology, published by the American Medical Association.
 - (d) "HCPCS" are CMS's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's Current Procedural Terminology codes, alphanumeric codes, and related modifiers. HCPCS codes are:
 - (i) "HCPCS Level I Codes" are the CPT codes and modifiers for professional services and procedures.
 - (ii) "HCPCS Level II Codes" are national alphanumeric codes and modifiers for health care products and supplies, and codes for professional services not included in the AMA's CPT codes.
 - (e) "ICD-CM Codes" are the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.
 - (f) "LOINC" means Logical Observation Identifiers Names and Codes. It is a set of universal codes and names to identify laboratory and other clinical observations developed by the Regenstrief Institute.
 - (g) "NDC" means the National Drug Codes of the Food and Drug Administration.
 - (h) "SNOMED" means Systematized Nomenclature of Medicine maintained and distributed by the International Health Terminology Standards Development Organisation. It is a systematically organized computer processable collection of medical terminology.
- (2) Electronic Data Interchange Standards
 - (a) "ASC X12N" are standard formats developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides either as promulgated or

as modified by another federally registered SDO;

(b) "HL7" are electronic data interchange standard formats developed by Health Level 7, which is a standards development organization accredited by the American National Standards Institute. The HL7 standard is usually modified into specific implementation guides by a separate standards development organization;

(c) "NCPDP" are standard formats for the transfer of data to and from the pharmacy services sector of the healthcare industry. It is developed by the National Council on Prescription Drug Program, which is a standards development organization accredited by the American National Standards Institute.

R380-70-4. Electronic Exchange Requirements.

(1) A health care provider or third party payer that exchanges information electronically with another health care provider or third party payer must comply with the provisions of this rule.

(2) A person required to report information to the Utah Department of Health and that submits its report electronically shall submit the report in accordance with the provisions of this rule.

(3) A health care provider or third party payer may reject electronically transmitted clinical information if it is not transmitted in accordance with this rule.

R380-70-5. Exemptions.

(1) This rule does not govern the exchange of information that is not conducted electronically or for which no standard has been established in this rule.

(2) This rule does not apply to the exchange of clinical health information among affiliates, as provided in 26-1-37, within a health care system.

(3) Nothing in this rule requires a health care provider or third party payer to use a specific telecommunications network for the exchange of clinical health information.

R380-70-6. Electronic Data Interchange Standards.

Standards incorporated by reference in this rule are available for public inspection at the department during normal business hours or at <http://health.utah.gov/phi/index.php?formname=laws>.

(1) A health care provider, a clinical laboratory, or third-party payer that electronically exchanges clinical health information with another health care provider, a clinical laboratory, or third-party payer must comply with the following Utah Health Information Network standards:-

- (a) Discharge Summary v2.0, March 4, 2009;
- (b) History and Physical v2.0, March 4, 2009;
- (c) Chief Complaint v2.0, March 15, 2009;
- (d) Operative Report v2.0, June 15, 2009;
- (e) Clinical Acknowledgement and Error Status v2.0, June 15, 2009;
- (f) Laboratory Test Result Identifiers v2.0, September 5, 2009;
- (g) Clinical Laboratory Results v2.0, September 30, 2009;
- (h) Radiology Report v2.0, June 21, 2010, which are incorporated by references.

R380-70-7. Standards Recommendations.

A party that recommends standards to the Department, shall seek guidance and work with national standard setting entities, such as the American National Standards Institute ASC X12, Health Level 7, and the National Council on Prescription Drug Program, that deal with the particular subject matter.

**KEY: standards, clinical health information exchange
July 5, 2011 26-1-30**

Notice of Continuation January 24, 2014

26-1-37

R382. Health, Children's Health Insurance Program.**R382-3. Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program.****R382-3-1. Introduction and Authority.**

(1) This rule is established under the authority of Section 26-40-103.

(2) The purpose of this rule is to establish provisions governing Accountable Care Organization (ACO) performance measures for the reduction of non-emergent use of emergency departments by beneficiaries in the Children's Health Insurance Program (CHIP).

R382-3-2. Definitions.

(1) "CHIP Beneficiary" means a child under the age of 19 who is eligible for the Children's Health Insurance Program under Title XXI of the Social Security Act as adopted in the state under Title 26, Chapter 40.

(2) "Non-emergent medical condition" means a medical condition that does not meet the criteria of an emergency medical condition under 42 U.S.C. 1395dd (e) of the Emergency Medical Treatment and Active Labor Act.

(3) "Non-emergent medical care" means:

(a) Medical care provided in an emergency room for the treatment of a non-emergent medical condition.

(4) "Non-emergent medical care" does not mean:

(a) Medical services necessary to conduct a medical screening examination to determine if the CHIP beneficiary has an emergent or non-emergent medical condition; and

(b) Medical care provided to a CHIP beneficiary who, using a prudent layperson standard, reasonably believes he is experiencing an "emergency medical condition" as defined by 42 U.S.C. 1395dd(e) of the Emergency Medical Treatment and Active Labor Act.

R382-3-3. Performance Measures.

(1) An ACO that contracts with the Department to provide services to CHIP beneficiaries shall report the following information to the Department in accordance with the terms of its contract:

(a) Emergency room visits with low acuity CPT codes 99281 or 99282;

(b) Actions the ACO takes to expand primary care and urgent care for CHIP beneficiaries who are enrolled in the Accountable Care Plan;

(c) Actions the ACO takes to implement emergency room diversion plans that include:

(i) Weekday, evening and weekend access to primary care providers and community health centers for CHIP beneficiaries and

(ii) Other innovations for expanding access to primary care.

(d) Other quality of care for CHIP beneficiaries who are enrolled in an ACO as required by the Department.

**KEY: children's health benefits
January 13, 2014**

**26-1-5
26-40-103
26-18-408**

R392. Health, Disease Control and Prevention, Environmental Services.**R392-101. Food Safety Manager Certification.****R392-101-1. Authority and Purpose of Rule.**

This rule is authorized by Section 26-15a-103 for the purposes of establishing statewide uniform standards for certified food safety managers and implementing the Food Safety Manager Certification Act.

R392-101-2. Definitions.

(1) As used in Title 26, Chapter 15a, and in this rule:

(a) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.

(b) Continental breakfast means a breakfast meal restricted to:

- (i) Beverages such as coffee, tea, and fruit juices;
- (ii) Pasteurized Grade A milk;
- (iii) Fresh fruits;
- (iv) Frozen and commercially processed and prepackaged fruits;
- (v) Commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;
- (vi) Cereals;
- (vii) Commercially prepackaged jams, jellies, honey, and syrup;
- (viii) Pasteurized Grade A creams and butters, non-dairy creamers, or similar products;
- (ix) Commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and
- (x) foods served with single-use articles.
- (xi) Single-use article means a utensil designed and constructed to be used once and discarded.
- (xii) Heat and serve foods are precooked by the manufacturer and do not require cooking to critical temperatures as required by R392-100, but only require heating to meet the customer's satisfaction.

R392-101-3. Certification and Recertification Examination Content.

Certification and recertification examinations shall require the examinee to demonstrate knowledge in food protection management in the following areas:

- (1) Identify foodborne illness.
 - (a) Define terms associated with foodborne illness.
 - (i) foodborne illness
 - (ii) foodborne outbreak
 - (iii) foodborne infection
 - (iv) foodborne intoxication
 - (v) diseases communicated by food
 - (vi) foodborne pathogens
 - (b) Recognize the major organisms and toxins that can contaminate food and the problems that can be associated with the contamination.
 - (i) bacteria
 - (ii) viruses
 - (iii) parasites
 - (iv) fungi
 - (c) Define and recognize potentially hazardous foods.
 - (d) Define and recognize chemical and physical contamination and illnesses that can be associated with chemical and physical contamination.
 - (e) Define and recognize the major contributing factors for foodborne illness.
 - (f) Recognize how microorganisms cause foodborne disease.
- (2) Identify time/temperature relationship with foodborne

illness.

(a) Recognize the relationship between time/temperature and microorganisms survival, growth, and toxin production during the following stages:

- (i) receiving
- (ii) storing
- (iii) thawing
- (iv) cooking
- (v) holding/displaying
- (vi) serving
- (vii) cooling
- (ix) storing or post production
- (x) reheating
- (xi) transporting
- (b) Describe the use of thermometers in monitoring food temperatures.

(i) types of thermometers

(ii) techniques and frequency

(iii) calibration and frequency

(3) Describe the relationship between personal hygiene and food safety.

(a) Recognize the association between hand contact and foodborne illness.

- (i) hand washing technique and frequency
- (ii) proper use of gloves, including replacement frequency
- (iii) minimal hand contact with food
- (b) Recognize the association of personal habits and behaviors and foodborne illness.

- (i) smoking
- (ii) eating and drinking
- (iii) wearing clothing that may contaminate food
- (iv) personal behaviors, including sneezing, coughing and scratching.

(c) Recognize the association of health of a foodhandler to foodborne disease

- (i) free of symptoms of communicable disease
- (ii) free of infections spread through food on contact
- (iii) food protected from contact with open wounds
- (d) Recognize how policies, procedures and management contribute to improved hygiene practices.

(4) Describe methods for preventing food contamination from purchasing to serving.

- (a) Define terms associated with contamination:
 - (i) contamination
 - (ii) adulteration
 - (iii) damage
 - (iv) approved source
 - (v) sound and safe condition
- (b) Identify potential hazards prior to delivery and during delivery.

- (i) approved source
- (ii) sound and safe condition
- (c) Identify potential hazards and methods to minimize or eliminate hazards after delivery:

- (i) personal hygiene
- (ii) cross contamination from food to food
- (iii) cross contamination between equipment and utensils
- (iv) contamination from chemicals
- (v) contamination from additives
- (vi) physical contamination
- (vii) contamination during service and display
- (viii) contamination from customers
- (ix) storage
- (x) re-service

(5) Identify correct procedures for cleaning and sanitizing equipment and utensils:

- (a) Define terms associated with cleaning and sanitizing.
 - (i) cleaning
 - (ii) sanitizing

- (b) Apply principles of cleaning and sanitizing
- (c) Identify materials: equipment, detergent and sanitizer
- (d) Identify appropriate methods of cleaning and sanitizing.
 - (i) manual dishwashing
 - (ii) mechanical dishwashing
 - (iii) clean-in-place
- (e) Identify frequency of cleaning and sanitizing
- (6) Recognize problems and potential solutions associated with facility, equipment and layout.
 - (a) Identify facility, design and construction suitable for food establishments:
 - (i) refrigeration
 - (ii) heating and hot-holding
 - (iii) floors, walls and ceilings
 - (iv) pest control
 - (v) lighting
 - (vi) plumbing
 - (vii) ventilation
 - (viii) water supply
 - (ix) wastewater disposal
 - (x) waste disposal
 - (b) Identify equipment and utensil design and location
- (7) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance:
 - (a) by self inspection program.
 - (b) by pest control program.
 - (c) by cleaning schedules and procedures.
 - (d) by equipment and facility maintenance program.

R392-101-4. Food Safety Manager Certification Courses.

- (1) For the purposes of Section 26-15a-104(2)(b), a course approved by the Department shall be designed for a specific approved examination in R392-101-5(4) as determined by that examination's developer.
- (2) The course developer shall certify the instructor.
- (3) The Department shall approve the course for 3 years.

R392-101-5. Test Approval.

- (1) A person seeking approval of an examination shall provide the following background information to the Department:
 - (a) The person's name, address, telephone number and contact person.
 - (b) A description of the usage of the examination including the time period in use, number of examinations already administered, and any government or other agencies already approving the examination.
 - (c) A copy of the examination's pool of questions. Each question shall be:
 - (i) Cross-referenced to the corresponding content area in R392-101-3, and
 - (ii) Documented with the correct answer and the source from which the correct answer was determined.
 - (d) A sample copy of the official certificate issued to persons who pass the examination.
- (2) An examination must meet the following requirements in order to be approved:
 - (a) It must contain at least 50 multiple choice questions, drawn from a pool of at least three times the number of questions given in the examination.
 - (b) All questions shall be multiple choice with 4 choices.
 - (c) At least 85% of the questions must be in the content categories of R392-101-3 and shall be apportioned to them as follows:
 - (i) Identify foodborne illness shall constitute 6-20% percent of the total examination questions,
 - (ii) Identify time/temperature relationship with foodborne

illness shall constitute 6-20% percent of the total examination questions,

- (iii) Describe the relationship between personal hygiene and food safety shall constitute 6-20% percent of the total examination questions,
- (iv) Describe methods for preventing food contamination from purchasing to serving shall constitute 6-20% percent of the total examination questions,
- (v) Identify correct procedures for cleaning and sanitizing equipment and utensils shall constitute 6-20% percent of the total examination questions,
- (vi) Recognize problems and potential solutions associated with facility, equipment and layout shall constitute 6-20% percent of the total examination questions,
- (vii) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance shall constitute 6-20% percent of the total examination questions.
- (d) The person seeking approval shall demonstrate that the same version of the examination will not be used more than 6 months and that at least 10% of the questions will be randomly selected and changed between versions.
- (e) The person seeking approval shall demonstrate that a system for updating the pool of questions at least every three years is in place.
- (f) The examination questions must be grammatically correct and contain no misspellings.
- (g) The distractors must be relevant to the examination question and represent a plausible alternative.

(3) The Department shall review the materials submitted by an applicant in R392-101-5(1) and (2). The Department shall approve examinations that meet the requirements. If an examination is approved the Department shall notify the examination developer of the approval in writing. If the Department does not approve an examination, it shall notify the examination developer in writing of the reasons why.

- (4) The Department shall maintain a current list of approved examinations.
- (5) A person may not represent an examination as Department of Health approved, or other similar language, if the examination is not listed according to R392-101-5(4).

R392-101-6. Test Administration.

- (1) Test administrators shall:
 - (a) Provide monitors and security at the locations where the examination is administered.
 - (b) Maintain a tracking system for all examinations to protect them against theft.
 - (c) Provide locations and dates of all examinations administered by the testing organization upon request of the Department.
 - (d) Provide necessary staff to administer, monitor and grade examinations.
 - (e) Maintain records of each candidate's name, home address, social security number, pass/fail status, date of examination, and name of instructor for at least three years.
 - (f) Provide accommodation for examinees who do not speak English and who wish to take the test.
- (2) The test administrator shall assure there is at least one monitor for every 40 students taking the examination.
- (3) The monitor shall confirm the identity of the individual who wishes to take the examination by photographic identification, driver's license or student identification card. The individual shall provide a legal document bearing his signature to the monitor if he does not have a photographic identification card.
- (4) The test administrator shall provide test security measures which protect the test from compromise in preparation, printing and transportation to the site, as follows:

(a) The examination materials are stored and administered under secure conditions, where access to the examination is limited to the monitor and test administrator.

(b) The examination materials are inventoried prior to and immediately following each administration of the examination.

(c) The examination materials are available to the candidate during the examination administration only.

(5) The test administrator may not certify an individual determined to have cheated on the examination.

(6) The test administrator may not administer an examination which has been compromised.

R392-101-7. Certification and Recertification Requirements.

(1) A person must answer at least 70% of the questions correctly on a Department- approved examination to pass the examination; except that the examination developer may set the passing score for an examination that it demonstrates to have been developed in accordance with the Standards For Educational And Psychological Testing published by the American Psychological Association.

(a) The examination developer must submit documentation to the Department supporting its claim.

(b) The Department shall review the documentation and determine the validity of the claim.

(2) A person who successfully passes a Department- approved examination must provide documentation of that to the local health officer within sixty days of receipt of the documentation to be certified as a food safety manager. A photocopy of the documentation is acceptable. If a certified food safety manager commences work in a different local health jurisdiction he shall notify the local health officer in that jurisdiction.

(3) A person who completes the requirement in R392-101-7(2) shall be considered to be certified as a food safety manager throughout Utah.

(4) Food safety manager certifications are effective for three years from the date the applicant receives documentation of a passing score from the testing organization.

(5) A food service establishment must maintain a copy of its certified food safety manager's documentation of a passing score on a Department-approved examination on file at the establishment. The food service establishment's person in charge must provide this documentation to the local health officer or his designated representative upon request.

(6) To recertify, a certified food safety manager must submit documentation to the appropriate local health department indicating a passing score on a Department-approved examination within the previous six months.

(7) A person certified as a food safety manager is exempt from state or local requirements for food handlers as defined in Section 26-15-1(1) Utah Code.

R392-101-8. Exempt Establishments.

A local health officer shall exempt a food service establishment from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment:

(1) is classified within the lowest risk category for a local health department utilizing a risk-based assessment system; or

(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:

(a) cook foods that are required to reach critical temperatures as required by R392-100;

(b) use foods that are required to be cooled within a 6 hour time period as required by R392-100; or

(c) use foods that must be reheated to 165 degrees as required by R392-100.

R392-101-9. Penalties.

Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: public health, food service

March 15, 2010

Notice of Continuation January 10, 2014

26-15a-103

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.**R398-4. Cytomegalovirus Public Health Initiative.****R398-4-1. Definitions.**

(1) "UDOH" and "Department" means the Utah Department of Health.

(2) "Hearing screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist or physician using the Department approved instrumentation, protocols and pass/refer criteria.

(3) "Medical practitioner" means the newborn infant's primary medical caregiver.

(4) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

R398-4-2. Purpose and Authority.

(1) The purpose of this rule is to clarify when a newborn infant hearing screening requires testing for CMV, medical practitioner reporting requirements and under what circumstances a newborn infant may not fall under the CMV testing requirements.

(2) This rule is authorized by Section 26-10-10(5) which provides that the Department may make rules to administer the provisions of this section.

R398-4-3. Clarification of When a Newborn Must Be Referred for CMS Testing.

(1) The newborn must be referred for CMV testing if the infant fails both the initial hearing screen routinely done at birth and the subsequent follow-up screen.

(2) The newborn must be referred for CMV testing when the initial failed screen is obtained after 14 days of age.

R398-4-4. Special Populations of Newborns.

(1) In special populations of newborns where newborn hearing screening(s) cannot be accomplished prior to 21 days of age, testing for CMV is left to the discretion of the medical practitioner(s) caring for the newborn.

(2) Special populations of newborns may include, but are not limited to, premature or medically fragile newborns or newborns receiving on-going medical care.

R398-4-5. Reporting Requirements.

Medical practitioners are required to submit results of the CMV testing to UDOH for each newborn under their care who is referred for CMV testing within 10 days of receiving results.

**KEY: cytomegalovirus, CMV, newborn hearing screening
January 17, 2014 26-10-10**

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.**R398-20. Early Intervention.****R398-20-1. Authority and Purpose.**

This rule implements the parent cost participation fee for the Baby Watch Early Intervention program under Part C of the Individuals with Disabilities Education Act (IDEA). This fee was mandated by the Utah State Legislature in the 2003 General Session, and modified in the 2013 General Session.

R398-20-2. Definitions.

- (1) "Department" means the Utah Department of Health.
- (2) "Provider" means a local direct service provider with whom the Department contracts to provide Part C services.

R398-20-3. Fees.

(1) The parent or legal guardian of an eligible child shall pay a monthly cost participation fee if their child is enrolled in the early intervention program and receives fee eligible services. The monthly fee is applicable for any month in which at least one billable service is:

- (a) provided; or
- (b) scheduled and not canceled within required time frames.

(2) Fees shall be charged based on a sliding fee schedule established by the Department. The sliding fee schedule shall begin at 185% of the most recently published federal poverty guidelines.

(3) The maximum fee on the sliding fee schedule shall be \$200 per month.

(4) The family cost participation fee shall not be charged if the child or the child's family receives benefits under any of the following programs:

- (a) Medicaid;
- (b) Temporary Assistance to Needy Families;
- (c) Family Employment Plan - Cash Assistance;
- (d) Women Infants and Young Children;
- (e) Early Head Start;
- (f) Primary Care Network; or
- (g) Children's Health Insurance Program

R398-20-4. Income Reporting and Fee Determination.

(1) Each child's parent or legal guardian shall annually report the family income using the Department's Family Fee Determination Form to determine the monthly family fee.

(2) Upon request, the parent or legal guardian must provide a copy of the most recent federal income tax filing to the Department and its early intervention providers to verify family income as reported by the child's parent or legal guardian. If the federal income tax filing is unavailable, the parent or legal guardian may submit the prior three months' check stubs to extrapolate annual income.

(3) Completion of the Family Fee Determination Form is voluntary. If a child's parent or legal guardian chooses not to complete the Family Fee Determination Form, the family must pay the maximum level on the fee schedule.

R398-20-5. Hardship, Extenuating Circumstances.

(1) An eligible child shall not be denied service because of a family's inability to pay. The provider may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

(2) If a family is able to pay, but chooses not to pay, the Department may instruct the local early intervention program to withhold fee eligible services.

R398-20-6. Services Not Subject to Fees.

(1) In accordance with Federal IDEA regulation, providers may not charge a fee for the following IDEA activities and services:

- (a) implementation of child find, such as child developmental screening, or public awareness activities;
- (b) evaluation and assessment;
- (c) service coordination;
- (d) activities to assist a child and the family to receive the authorized services;

(e) activities related to the development, review and evaluation of the Individualized Family Service Plan;

(f) activities related to child and family rights, including the administrative complaint process and mediation; or

(g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and the Blind Parent Infant Programs, or Deaf Blind services.

**KEY: early intervention, education, disabilities
January 28, 2014**

Notice of Continuation August 2, 2013

26-10-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-14. Home Health Services.

R414-14-1. Introduction.

The Home Health Services program provides a scope of home health services for Medicaid recipients in accordance with the Home Health Agencies Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid

January 10, 2014

26-1-5

Notice of Continuation September 23, 2009

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-21. Physical Therapy and Occupational Therapy.****R414-21-1. Introduction.**

The Physical Therapy and Occupational Therapy programs provide a scope of services for Medicaid recipients in accordance with the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid**January 10, 2014****Notice of Continuation March 2, 2012****26-1-4.1****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.****R414-49-1. Introduction.**

The Medicaid Dental Program provides a scope of dental services for Medicaid recipients in accordance with the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid**January 10, 2014****Notice of Continuation November 2, 2009****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction and Authority.**

(1) This rule governs the provision of speech-language pathology services.

(2) This rule is authorized by Sections 26-18-3 and 26-18-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-54-2. Definitions.

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

R414-54-3. Services.

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual.

(3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

R414-54-4. Client Eligibility Requirements.

(1) Speech-language pathology 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.

(2) An individual receiving speech-language pathology services may receive speech-language pathology services as described in the Speech-Language Pathology Provider Manual.

(3) An individual receiving speech-language pathology services must meet the criteria established in the Speech-Language Pathology Provider Manual and obtain prior approval if required.

R414-54-5. Reimbursement.

Speech-language pathology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, speech-language pathology services**November 15, 2011****26-1-5****Notice of Continuation January 7, 2014****26-18-3**

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.

The Medical Transportation program provides medical transportation services for Medicaid recipients in accordance with the Medical Transportation Utah Medicaid Provider Manual, as incorporated into Section R414-1-5.

R414-306-6. State Supplemental Payments for 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 10, 2014 **26-18**
Notice of Continuation January 23, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-503. Preadmission Screening and Resident Review.****R414-503-1. Introduction and Authority.**

This rule implements 42 U.S.C. 1396r(b)(3) and (e)(7) and Pub. L. No. 104 315, which require preadmission screening and resident review (PASRR) of nursing facility residents with serious mental illness or intellectual disability. This rule applies to all Medicare/Medicaid-certified nursing facility admissions irrespective of the payment source of an individual's nursing facility services.

R414-503-2. Definitions.

In addition to the definitions in Section R414-1-2 and Section R414-501-2, the following definitions apply:

(1) "Break in Stay" occurs when a resident of a Medicare/Medicaid-certified nursing facility:

(a) voluntarily leaves against medical advice for more than two consecutive days;

(b) fails to return within two consecutive days after an authorized leave of absence;

(c) discharges into a community setting; or 251658240

(d) is admitted to the Utah State Hospital, to a civil or forensic bed (not the Adult Recovery Treatment Center).

(2) "Intellectual Disability" is the equivalent term for "Mental Retardation" in federal law.

R414-503-3. PASRR Level I Screening for All Persons.

The purpose of a PASRR Level I Screening is for a health care professional to identify any person with a serious mental illness, intellectual disability or other related condition so the professional may consider that person for admission to a Medicare/Medicaid-certified nursing facility. The health care professional who conducts the Level I Screening shall refer the person for a Level II Evaluation if the professional determines that the person has a serious mental illness, intellectual disability or other related condition.

(1) The health care professional shall complete a Level I Screening before any Medicare/Medicaid-certified nursing facility admission.

(2) The health care professional shall complete the Level I Screening on a form supplied by the Department.

(3) The health care professional shall sign and date the Level I Screening.

(4) The nursing facility shall revise the Level I Screening if there is a significant change in the person's condition.

(5) The Department shall require Level I Screening for all persons even if a person cannot cooperate or participate in Level I Screening due to delirium or other emergency circumstances. The health care professional shall complete the Level I Screening by using available medical information or other outside information.

R414-503-4. PASRR Level II Evaluation Criteria.

The purpose of a Level II Evaluation is to avoid unnecessary or inappropriate nursing facility admission of persons with serious mental illness or intellectual disabilities or related conditions. The Level II evaluation ensures that persons with serious mental illness or intellectual disabilities or related conditions are recommended for specialized services when a health care professional determines there is a need for specialized services during the evaluation process. The Department bases Level II Evaluations on the criteria set forth in 42 CFR 483.130. Level II Evaluations must address the level of nursing services, specialized services, and specialized rehabilitative services needed for the patient.

(1) The health care professional who completes the Level I screening shall refer the person to a contracted mental health PASRR Evaluator for the Level II Evaluation if the Level I

Screening indicates the person meets all of the following criteria:

(a) The person has a serious mental illness as defined by the State Mental Health Authority and identified by the Level I Screening;

(b) The diagnosis of mental illness falls within the diagnostic groupings as described in the Diagnostic and Statistical Manual; and

(c) In addition to the criteria listed in Subsection R414-503-4(1)(a)(b), the person meets any one of the following criteria:

(i) The person has undergone psychiatric treatment at least twice in the last two years that is more intensive than outpatient care;

(ii) Due to a significant disruption in the person's normal living situation, the person requires supportive services to maintain the current level of functioning at home or in a residential treatment center; or

(iii) The person requires intervention by housing or law enforcement officials.

(2) The health care professional who completes the Level I screening shall refer the person to the Intellectual Disability or Related Condition Authority for the Level II Evaluation if the Level I Screening indicates the person meets at least one of the following criteria:

(a) The person has received a diagnosis of an intellectual disability or related condition;

(b) The person has received a diagnosis of epilepsy or seizure disorder with onset before 22 years of age;

(c) The person has a history of intellectual disability or related condition, or an indication of cognitive or behavioral patterns that indicate the person has an intellectual disability or related condition; or

(d) The person is referred by any agency that specializes in the care of persons with intellectual disabilities or related conditions.

(3) The health care professional who completes the Level I screening shall refer the person to both the contracted mental health PASRR Evaluator and the Intellectual Disability or Related Condition Authority if the person meets the criteria for Subsection R414-503-4(1) and (2).

(4) The health care professional who completes the Level I screening shall provide written notice of a Level II Evaluation referral to the person, the person's legal representative, and the prospective nursing facility.

(5) If the person does not meet the criteria in Subsection R414-503-4(1) or (2), the Department may not require a further PASRR Evaluation unless there is a significant change in condition.

R414-503-5. PASRR Level II Exemptions.

The Department may not require a Level II Evaluation for any of the following reasons:

(1) The person does not meet the criteria listed in Subsection R414-503-4 (1) or (2);

(2) The nursing facility admits the person as a provisional admission due to delirium, an accurate diagnosis cannot be made until the delirium clears, and the nursing facility placement does not exceed seven days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the seventh day if the placement will extend beyond the seventh day.

(3) The nursing facility admits the person as a provisional admission due to an emergency situation requiring protective services, and the nursing facility placement does not exceed seven days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the seventh day if the placement will extend beyond the seventh day.

(4) The person is admitted to a nursing facility directly

from a hospital and requires nursing facility services for the condition treated in the hospital (not psychiatric treatment), and the attending physician certifies in writing before the admission that the person is likely to be discharged in less than 30 days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the 30th day if the placement will extend beyond the 30th day.

(5) The contracted mental health PASRR evaluator may terminate the Level II Evaluation at any time if the evaluator determines that the person does not have a serious mental illness. The Level II Evaluator shall document that the person does not have a serious mental illness.

(6) The person has a previous Level II Evaluation and the nursing facility readmits the person to the same or a different nursing facility following hospitalization for medical care without a break in stay. This provision does not apply if the person is hospitalized for acute psychiatric treatment. Following readmission, the nursing facility shall review and update the PASRR Level I Screening to determine whether there is a significant change in condition that requires a Level II Re-evaluation.

(7) The person has a previous Level II Evaluation and the nursing facility transfers the person to another nursing facility with or without intervening hospitalization and without a break in stay. This provision does not apply if the person is hospitalized for psychiatric treatment. Following transfer, the nursing facility shall review and update the Level I Screening to determine whether there is a significant change in condition that requires a Level II Re-evaluation.

R414-503-6. PASRR Level II Categorical Determinations.

The Level II Evaluator may make one of the following categorical determinations:

(1) Convalescent Care - The person is eligible for convalescent care for an acute physical illness that requires hospitalization and does not meet the criteria for an exempt hospital discharge, (which, as specified in 42 CFR 483.106(b)(2) is not subject to preadmission screening). The convalescent care determination only applies if the person is at a hospital for a medical condition and is going to the Medicare/Medicaid-certified nursing facility for the same medical condition. The Convalescent Care Categorical Determination is valid for up to 120 days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the 120th day if the placement will extend beyond the 120th day.

(2) Short-term Stay - The person is eligible for a short-term stay for an acute physical illness in which the person is seeking admission to the nursing facility directly from a community setting. The Short-term Stay Categorical Determination is valid for a maximum of 120 days. The nursing facility shall refer the person for a Level II Evaluation before the end of the number of days specified if the placement will extend beyond the number of days specified by the State Mental Health Authority or Intellectual Disabilities Authority.

(3) Terminal Illness - The person is eligible for a stay related to a terminal illness when a physician provides a written statement that the person has a terminal illness. If the individual is not receiving hospice services at the time of the Level II Evaluation, an individualized Level II Evaluation is required.

(4) Severe Physical Illness - The person is eligible for a Severe Physical Illness Categorical Determination when the person has a level of impairment so severe that the individual cannot be expected to benefit from specialized services. This level of impairment includes conditions such as:

- (a) being in a coma;
- (b) being ventilator dependent; or
- (c) functioning at a brain stem level.

(5) Dementia and Intellectual Disability - The State

Intellectual Disability Authority or delegated agency (not Level I screeners) may make categorical determinations that individuals with dementia, which exists in combination with intellectual disability or a related condition, do not need specialized services.

(6) Dementia and Mental Illness -The health care professional may terminate the PASRR Level II Evaluation if the health care professional discovers that the person has dementia and a serious mental illness during the evaluation process, and there is evidence that dementia is the primary condition. For example, the dementia has resulted in increased functional deficits and is the primary reason for requiring nursing facility services.

R414-503-7. Individualized Level II Determinations.

The Level II Evaluator may make one of the following individualized determinations:

(1) The person does not need nursing facility services. This determination disqualifies the person from admission to a Medicare/Medicaid-certified nursing facility.

(2) The person does not need nursing facility services but does need specialized services as defined by the State Mental Health Authority or Intellectual Disability or Related Condition Authority. This determination disqualifies the person from admission to a Medicare/Medicaid- certified nursing facility.

(3) The person needs nursing facility services but not specialized services. This determination qualifies the person for admission to a Medicare/Medicaid-certified nursing facility.

(4) The person needs nursing facility services and requires specialized services. The Level II Evaluation will specify the specialized services that are needed. This determination qualifies the person for admission to a Medicare/Medicaid-certified nursing facility. The State Mental Health Authority or the Intellectual Disabilities or Related Conditions Authority shall provide a copy of the Level II Evaluation and findings to the person, the person's legal representative, the nursing facility, and the attending physician.

(5) Out-of-State Arrangement for Payment: The state in which the person is a resident (or would be a resident at the time the person becomes eligible for Medicaid) as defined in 42 CFR 435.403 shall pay for the Level II Evaluation in accordance with 42 CFR 431.52(b).

(6) The nursing facility, in consultation with the person and his legal representative, shall arrange for a safe and orderly discharge from the nursing facility, and shall assist with linking the person to supportive services and preparing the person for discharge if the person no longer meets the medical criteria for nursing facility services, or a Level II Evaluation disqualifies the person as no longer eligible for nursing facility placement.

R414-503-8. Penalties.

A nursing facility may not admit a patient until the health care professional completes the PASRR Level I Screening, and if necessary, the PASRR Level II Evaluation and Determination, finding that the patient is eligible for nursing facility services. The Department may not reimburse a nursing facility for any days in which the facility admits a patient before completion of the PASRR process.

KEY: Medicaid

January 7, 2014

Notice of Continuation August 20, 2009

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-511. Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services.****R414-511-1. Introduction and Authority.**

(1) This rule is established under the authority of Section 26-18-408.

(2) The purpose of this rule is to establish provisions governing Accountable Care Organization (ACO) accountable performance measures for the reduction of non-emergent use of emergency departments by Medicaid beneficiaries.

R414-511-2. Definitions.

(1) "Non-emergent medical condition" means a medical condition that does not meet the criteria of an emergency medical condition under 42 U.S.C. 1395dd (e) of the Emergency Medical Treatment and Active Labor Act.

(2) "Non-emergent medical care" means:

(a) Medical care provided in an emergency room for the treatment of a non-emergent medical condition.

(3) "Non-emergent medical care" does not mean:

(a) Medical services necessary to conduct a medical screening examination to determine if the Medicaid beneficiary has an emergent or non-emergent medical condition; and

(b) Medical care provided to a Medicaid beneficiary who, using a prudent layperson standard, reasonably believes he is experiencing an "emergency medical condition" as defined by 42 U.S.C. 1395dd(e) of the Emergency Medical Treatment and Active Labor Act.

(4) "Medicaid Beneficiary" means a person who enrolls in an ACO in accordance with the Department's "Choice of Health Care Delivery Program" (CHCDP) freedom-of-choice waiver under Section 1915(b) of the Social Security Act.

R414-511-3. Performance Measures.

(1) An ACO that contracts with the Department to provide services to Medicaid beneficiaries shall report the following information to the Department in accordance with the terms of its contract:

(a) Emergency room visits with low acuity CPT codes 99281 or 99282;

(b) Actions the ACO takes to expand primary care and urgent care for Medicaid beneficiaries who are enrolled in the Accountable Care Plan;

(c) Actions the ACO takes to implement emergency room diversion plans that include:

(i) Weekday, evening and weekend access to primary care providers and community health centers for Medicaid beneficiaries and

(ii) Other innovations for expanding access to primary care.

(d) Other quality of care for Medicaid beneficiaries who are enrolled in an ACO as required by the Department.

KEY: Medicaid
January 13, 2014

26-1-5
26-18-3
26-18-408

R428. Health, Center for Health Data, Health Care Statistics.**R428-15. Health Data Authority Health Insurance Claims Reporting.****R428-15-1. Legal Authority.**

This rule is promulgated under authority granted in Utah Code Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in R428-1.

R428-15-2. Purpose.

This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

R428-15-3. Definitions.

These definitions apply to rule R428-15, in addition:

(1) "Committee" means the Utah Health Data Committee as defined in 26-33a-102.

(2) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(3) "Carrier" means:

(a) a commercial insurance company engaged in the business of health care insurance in the state of Utah, as defined in 31A-1-301, including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator, as defined in 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in 31A-1-301;

(c) a governmental plan as defined in Section 414 (d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code;

(e) a licensed professional employer organization acting as an administrator of a health care insurance policy;

(f) a health benefit plan funded by a self-insurance arrangement; or

(g) a dental stand-alone company as defined in 31A-8-101.

(4) "Claim" means a request or demand on a carrier for payment of a benefit.

(5) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(6) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(7) "Health Insurance" has the same meaning as found in Subsection 31A-1-301.

(8) "Technical specifications" means the Technical Specifications and Data Submission Procedures for the State of Utah All Payer Database Version 1.3 for data submissions required prior to May 15, 2014 and the Utah All-Payer Claims Database Data Submission Guide Version 2 for data submissions beginning May 15, 2014. Both documents are adopted and incorporated by reference.

R428-15-4. Reporting Requirements.

(1) Each carrier shall submit health care claims data described in the technical specifications for each covered person where Utah is the covered person's primary residence, regardless of where the services are provided.

(2) Each carrier shall submit data for all fields contained in the technical specifications if the data are available to the carrier. Each carrier shall notify the Office or its designee of any data elements that are required to be reported under this rule, but that are not available to the carrier.

(3) Each carrier shall submit the health care claims data on

a monthly basis.

(4) Each monthly submission is due no later than the last day of the month following the month in which the carrier adjudicated the claim.

R428-15-5. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications.

R428-15-6. Extensions and Exemptions.

(1) A carrier that covers fewer than 2,500 individual Utah residents is exempt from all requirements of this rule.

(2) The committee may grant exemptions when the carrier demonstrates that compliance imposes an unreasonable cost to the carrier. The committee may grant extensions when the carrier documents that technical or unforeseen difficulties prevent compliance.

(a) A carrier may request an extension for any deadline required in this rule. For each deadline for which the carrier requests an extension, the carrier must submit its request no less than 15 calendar days before the deadline in question.

(b) A carrier may request an exemption from any particular requirement or set of requirements of this rule. The carrier must submit a request for exemption no less than 30 calendar days before the date the carrier would have to comply with the requirement.

(3) The carrier requesting an extension or exemption shall include:

(a) The carrier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(4) The committee may grant an extension for a maximum of 30 calendar days. A carrier wishing an additional extension must submit an additional, separate request.

(5) The committee may grant an exemption for a maximum of one calendar year. A carrier wishing an additional exemption must submit an additional, separate request.

R428-15-7. Third-party Contractors.

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R428-15-8. Carrier Registration.

Each carrier required to submit health care claims data shall register by September 1 of each year. Each carrier newly required to submit health care claims data under this rule, either by a change to the rule or because it no longer qualifies for an exemption, shall register with the Office by completing the registration on line at: <http://health.utah.gov/hda/apd/> within 30 days of being required to submit.

R428-15-9. Testing of Files.

(1) Prior to February 14, 2014, each carrier required to report under this rule shall meet with the Office or its designee to establish a data submission testing plan and time line. Each carrier shall contact the Office to arrange this meeting by January 15, 2014.

(2) Each carrier shall, according to its data submission testing plan, submit to the Office or its designee a test dataset for determining compliance with the standards for data submission and participate in testing. This test dataset must be

in the same format as required by the technical specifications as of May 15, 2014.

(3) Carriers that become subject to this rule after January 15, 2014 shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R428-15-10. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. A carrier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within 10 state business days of notice that the data does not meet the submission requirements.

R428-15-11. Replacement of Data Files.

A carrier may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the carrier can establish exceptional circumstances for the replacement.

R428-15-12. Limitation of Liability.

As provided in Utah Code Section 26-25-1, a carrier that submits data pursuant to this rule, including third-party administrators that submit employee data, is not liable for providing the information to the Department.

R428-15-13. Penalties.

Pursuant to Section 26-23-6, a carrier that violates any provision of this rule may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

- (1) Not to exceed the sum of \$10,000 per violation
- (2) Each day of violation is a separate violation.

**KEY: APCD, payers, claims, transparency
January 7, 2014**

**26-33a
26-25**

**R432. Health, Family Health and Preparedness, Licensing.
R432-2. General Licensing Provisions.**

R432-2-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

- (a) is administered by a parent facility within the scope of the parent facility's current license;
- (b) is located further than 250 yards from the licensed facility or other areas determined by the department to be a part of the provider's campus;
- (c) does not qualify for licensing under Section 26-21-2, and
- (d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

- (a) location of the remote facility (street address);
- (b) capacity of the remote facility;
- (c) license category of the parent facility;
- (d) service to be provided at the remote facility (must be a service authorized under the parent facility license);
- (e) ancillary administrative and support services to be provided at the remote facility; and
- (f) International Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

- (a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;
- (b) The remote facility physical structure complies with all construction codes appropriate for the service provided;
- (c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service

treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.

(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for

license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(9) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

R432-2-7. License Fee.

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

- (1) architectural plans and a description of the functional program.
- (2) policies and procedures manuals.
- (3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.
- (4) data reports including the submission of the annual report at the Departments request.
- (5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

- (1) The license shall document the following:
 - (a) the name of the health facility,
 - (b) licensee,
 - (c) type of facility,
 - (d) approved licensed capacity including identification of operational and banked beds,
 - (e) street address of the facility,
 - (f) issue and expiration date of license,
 - (g) variance information, and
 - (h) license number.
- (2) The license is not assignable or transferable.
- (3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.
- (4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

- (1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.
- (2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.
- (3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.
- (4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.
- (5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.
- (6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-12. New License Required.

- (1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:
 - (a) occupancy of a new or replacement facility.
 - (b) change of ownership.
- (2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:
 - (a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.
 - (b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.
 - (c) new contracts for professional or other services not provided directly by the facility have been secured.
 - (d) new transfer agreements have been drafted and signed.
 - (e) written documentation exists of clear ownership or lease of the facility by the new owner.
- (3) Upon sale or other transfer of ownership, the licensee

shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-13. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

- (a) increase or decrease of licensed capacity.
- (b) change in name of facility.
- (c) change in license category.
- (d) change of license classification.
- (e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-14. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

- (a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.
- (b) make provision for the safe keeping of records.
- (c) return all patients' monies and valuables at the time of discharge.
- (d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

- (a) the location and date of discharge for all residents,
- (b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and
- (c) the date and time that the facility complied with the closure order.

R432-2-15. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than

six months. It may issue no more than one provisional license to any health facility in any 12-month period.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

- (a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;
- (b) more than three cited repeat Class I or II violations from the previous year; or
- (c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.

A standard license is a license issued to a licensee if:

- (1) the licensee meets the conditions attached to a provisional or conditional license;
- (2) the licensee corrects the identified rule violations; or
- (3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

R432-2-18. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

R432-2-19. Change In Ownership.

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner;

or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

January 24, 2014

Notice of Continuation August 12, 2013

26-21-9

26-21-11

26-21-12

26-21-13

R477. Human Resource Management, Administration.**R477-4. Filling Positions.****R477-4-1. Authorized Recruitment System.**

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee:

(i) is hired to work part time indefinitely;

(ii) shall work less than 30 hours per week; and

(iii) shall be notified annually of the temporary status of the position; or

(b) be Schedule TL, in which the employee:

(i) is hired to work on a time limited basis; and

(ii) shall be notified annually of the temporary status of the position.

(c) may, at the discretion of management, be offered benefits if working a minimum of 20 hours per week.

(d) if the required work hours of the position meet or exceed 30 hours per week for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

(6) Disclosure statements shall be obtained and reference and background checks shall be conducted for all Schedule AB, AC, AD and AR new hire appointees.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

(d) A transfer may include a decrease in actual wage.

(e) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(f) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and is not in longevity. Longevity rules may not apply until the employee has been above the salary range maximum for three years and all other longevity criteria are met.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(c) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have

forfeited sick leave reinstated to Program I and Program II as accrued prior to the reduction in force.

(d) A rehired employee may be offered any salary within the salary range for the position.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

(a) a detailed position record (DPR) based upon a current job or position analysis;

(b) an initial, impartial screening of the individual's qualifications;

(c) impartial evaluation and results; and

(d) reasonable accommodation for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using the DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-4(11).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-15. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices

January 14, 2014

Notice of Continuation February 2, 2012

67-19-6

67-20-8

R477. Human Resource Management, Administration.**R477-6. Compensation.****R477-6-1. Pay Plans.**

(1) With approval of the Governor, the Executive Director, DHRM, shall develop and adopt pay plans for each position in classified service. Positions exempt from classified service are identified in Subsection R477-3-1(1).

(a) Each job description shall include salary ranges with established minimum and maximum rates.

(b) A salary range includes all pay rates from minimum to maximum.

(c) Pay rate increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum rate within the salary range, if the difference between the current salary rate and the range maximum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments and longevity.

(d) Pay rate decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum rate within the salary range, if the difference between the current salary rate and the range minimum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments.

R477-6-2. Allocation to the Pay Plans.

(1) Each job in classified service shall be assigned to a salary range.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ranges in the market; or

(b) a comparison of the state's benchmark job salary ranges to salary ranges for similar positions in the market through an annual compensation survey conducted by DHRM.

(i) Market comparability salary range adjustment recommendations shall be included in the annual compensation plan and shall be submitted to the Governor no later than October 31 of each year.

(ii) Market comparability salary range adjustments shall be legislatively approved.

(iii) If market comparability adjustments are approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-3. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, salary, including any cost of living adjustments, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) Merit increases. The following conditions apply if merit pay increases are authorized and funded by the legislature:

(a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are

met:

(i) Employee may not be in longevity.

(ii) Employee may not be paid at the maximum of their salary range.

(iii) Employee has received a minimum rating of successful on their most recent performance evaluation, which shall have been within the previous twelve months.

(iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.

(b) Employees designated as schedule AA, AQ and AU are not eligible for merit increases.

(c) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office to determine if they are eligible for merit increases.

(2) Promotions.

(a) An employee, except for those designated schedule IN or TL, promoted to a position with a salary range maximum exceeding the employee's current salary range maximum shall receive a salary increase of at least 5%.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(3) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a position with a salary range maximum exceeding the employee's current salary range maximum may receive a pay rate increase of at least 1/2% or the salary range maximum rate.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) An employee whose position is reclassified to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at the maximum of the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee in longevity shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee in longevity shall only be eligible for an additional 2.75% increase every three years. To be eligible, an employee shall receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee in longevity who is reclassified or reassigned to a position with a lower salary range shall retain the current actual wage.

(e) An employee in longevity who is promoted or reclassified to a position with a higher salary range shall only receive a salary increase if the current actual wage is less than the salary range maximum of the new position. The salary increase shall be at least 1/2% or the range maximum rate of the

new position.

(f) Employees who are not in longevity and are reclassified, transferred or reassigned and have a current actual wage that is above the salary range maximum of the new position are considered to be above maximum and are not in longevity. Longevity rules may not apply until the employee has been above the salary range maximum for three years and all other longevity criteria are met.

(g) Employees in Schedules AB, IN, or TL are not eligible for the longevity program.

(5) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, may not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum of the new range.

(c) An employee whose position is changed by administrative adjustment to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(6) Reassignment.

An employee's current actual wage may not be lowered except when provided in federal or state law. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(7) Transfer.

Management may decrease the current actual wage of an employee who transfers to another position with a lower salary range maximum. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(8) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or the minimum rate of the new position's salary range as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or the maximum rate of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

- (i) in writing;
- (ii) approved by the agency head or designee;
- (iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage rate increases shall be at least 1/2% or the maximum rate of the salary range. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the salary range maximum or in longevity may not be granted administrative salary increases.

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the

following:

(a) The final salary may not be less than the minimum of the salary range.

(b) Wage rate decreases shall be at least 1/2% or the minimum rate of the salary range.

(c) Justification for administrative salary decreases shall be:

- (i) in writing;
- (ii) approved by the agency head; and
- (iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(11) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a salary increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(12) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage rate increases or decreases.

R477-6-5. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based incentive awards shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the incentive award based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

R477-6-6. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(b) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.

(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible

employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-6-7. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or the maximum rate of the current salary range. An employee at the maximum of the current salary range or in longevity shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-5(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee may not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future

eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-9. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: salaries, employee benefit plans, insurance, personnel management

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	67-19-12.5
	67-19-15.1(4)

R477. Human Resource Management, Administration.**R477-7. Leave.****R477-7-1. Conditions of Leave.**

(1) An employee shall be eligible for benefits when:
 (a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working at least 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, converted sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.

(6) An employee may not use any type of leave except jury leave to accrue excess hours.

(7) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(9) After six months cumulative from the first day of absence from or inability to perform the regular position, the employee shall be separated from employment regardless of paid leave status unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(10) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years -- six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year, subject to Subsection R477-7-1(5).

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be

supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) To be eligible, an employee shall have accrued a total of 144 hours or more of sick leave in Program I and Program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in Program I and Program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(5) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(6) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(7) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(8) A retired employee who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall have a new benefit calculated on any new Program II converted sick leave hours accrued for the new period of employment, upon subsequent retirement. The employee shall be reemployed for at least two years before receiving this benefit.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006 shall be Program II sick leave hours.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall have a new benefit calculated on any new Program II sick leave hours accrued for the new period of employment, upon subsequent retirement. The employee shall be reemployed for at least two years before receiving this benefit.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or
(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(4) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the unit where the salary is recorded.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

An employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Section 39-3-2.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for a disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer

and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management for approval of a leave of absence without pay.

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(b) The employee shall be entitled to previously accrued annual and sick leave.

(c) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law.

(2) Nonmedical Reasons

(a) Approval may be granted for continuous leave for up to six months from the last day worked in the employee's regular position. Exceptions may be granted by the agency head.

(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.

(c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who does not qualify for FMLA, Workers Compensation, or Long Term Disability may be granted leave without pay for medical reasons not to exceed six months cumulative from the first day of absence or inability to perform the employee's regular position.

(i) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(b) After six months cumulative from the first day of absence or inability to perform the regular position, the employee shall be separated from employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(c) Except as otherwise provided under the Family Medical Leave Act, an employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a

reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 work weeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, dependent child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 work weeks of family and medical leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

(a) be employed by the state for at least one year;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as practicable in emergencies.

(7) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iii) employee has been absent from work for six months;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position after six months cumulative from the first day of absence or inability to perform in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment

unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) may be granted up to six months of leave cumulative from the first day of absence or inability to perform the regular position as the result of health conditions, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position. Exceptions to the six months may be granted by the agency head in consultation with DHRM.

(a) For LTD qualifying purposes, the medical leave begins on the day after the last day the employee worked in the employee's regular position. LTD requires a waiting period before benefit payments begin.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked or the last day of FMLA leave.

(i) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(c) Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) After six months of cumulative absence from or inability to perform the regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head.

(4) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

(5) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(b) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(c) An employee may not receive donated leave until all

individually accrued leave is used.

(d) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(e) Employees using donated leave may not work a second job without written consent of the agency head.

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations

January 14, 2014

Notice of Continuation February 2, 2012

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63G-1-301

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R477. Human Resource Management, Administration.**R477-101. Administrative Law Judge Conduct Committee.****R477-101-1. Authority and Purpose.**

This rule is enacted pursuant to Utah Code Section 67-19e-104, requiring the Department of Human Resource Management to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

R477-101-2. Definitions.

In addition to the terms defined in Utah Code Section 67-19e-102:

(1) "Administrative Law Judge" (ALJ) includes Hearing Officers employed or contracted by a state agency that meet the criteria described in Utah Code Section 67-19e-102(1)(a).

(2) "Chair" means the Executive Director, Department of Human Resource Management, or designee.

(3) "Code of Conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in Utah Code Section 67-19e-108.

(5) "Committee Meeting" means a proceeding at which a Complaint is presented to the Committee by the investigator. Respondent ALJ shall also have the opportunity to appear and speak regarding the Complaint and its allegations.

(6) "Complaint" means a written document filed with the Department pursuant to Utah Administrative Code R477-101-401 alleging Misconduct by an ALJ.

(7) "Department" means the Department of Human Resource Management.

(8) "Final Agency Action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.

(9) "Full investigation" means that portion of an investigation where the Respondent ALJ may respond, in writing, to specific allegations identified in a Complaint. A Full Investigation may also include, but is not limited to: examination by the Investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, Respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides responsible basis for action or a decision.

(11) "Interested Party" means an individual or entity who participated in an event or proceeding giving rise to a Complaint against the Respondent ALJ.

(12) "Investigator" means a person employed by the department to perform investigations mandated under Utah Code Section 67-19e-107 and present information at the Committee Meeting.

(13) "Misconduct" means a violation of the Code of Conduct or Utah Code Section 67-19e-101 et seq.

(14) "Preliminary Investigation" means that portion of an investigation conducted by the Department upon receipt of a Complaint. A Preliminary Investigation may include, but is not limited to: examination of documents, correspondence, interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a Complaint is filed.

R477-101-3. Jurisdiction.

(1) Administrative Law Judges. The Committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding Complaints filed against ALJs.

(2) Former ALJs. The Committee has continuing jurisdiction over former ALJs regarding allegations that Misconduct occurred during service as an ALJ if a Complaint is received before the ALJ's appointment concludes.

R477-101-4. Records Classification and Retention.

(1) Records prepared by and for the Committee, including all Complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Utah Code Section 63G-2-305.

(2) Committee records shall be maintained by the department for a period of three years following the conclusion of any Committee activity.

R477-101-201. Committee.

(1) The Executive Director or designee shall serve as Chair of the Committee, and appoint four Executive Directors or their designees to serve on the Committee.

(2) Only Executive Directors of agencies that employ or contract with ALJs may serve on the Committee.

(3) If a Department investigation establishes a Complaint requires further action, the Executive Director and Chair shall convene the Committee.

(4) An Executive Director of the agency that employs or contracts with the Respondent ALJ may not participate in a Committee proceeding involving the Respondent ALJ.

(5) After convening the Committee, the Department shall provide a copy of the Complaint and its investigative results to the Committee and the Respondent ALJ.

(6) Within 30 days of the date the Committee is convened on a complaint the Committee shall schedule a Committee Meeting. At the Committee Meeting the Respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a Complaint.

(7) Committee members may attend Committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the Chair.

(8) After consideration of all information provided at the Committee Meeting, the Committee shall dispose of the Complaint by issuing a decision or report with a recommendation to the agency containing:

(a) a brief description of the Complaint and the investigative results;

(b) findings, and;

(c) recommendations.

(9) Committee members shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

R477-101-202. Duties of the Chair.

(1) The Chair shall:

(a) receive, acknowledge receipt of and review Complaints;

(b) notify complainants about the status and disposition of their Complaints,

(c) make recommendations to the Committee regarding further proceedings or the disposition of a Complaint;

(d) stay investigation(s) or committee proceedings pending Final Agency Action of the matter giving rise to the Complaint against the Respondent ALJ;

(e) maintain records of the Committee's operations and actions;

(f) compile data to aid in the administration of the Committee's operations and actions;

(g) prepare and distribute an annual report of the Committee's operations and actions;

(h) direct the operations of the Committee's office, and supervise other members of the Committee's staff;

(i) make available to the public the laws, rules, and procedures of the Committee and its operations;

(j) consider requests for extension of time periods and, upon a showing of Good Cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the Chair may delegate any of the foregoing duties to other members of the Committee's staff.

R477-101-301. Code of Conduct.

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) In order to suit a specific agency need, an agency may make an addendum or modification to the Code of Conduct. Any such addendum or modification shall be specific to their agency. In addition, any addendum or modification to the Code of Conduct must be reviewed and approved by the Committee before being implemented. The Committee may be convened for the purpose of reviewing any proposed addendum or modification.

R477-101-401. Filing Procedure.

(1) An individual who alleges a violation of the Code of Conduct or otherwise has a Complaint against an ALJ may file a timely Complaint with the Department. To be timely a Complaint must be in writing and filed with the Department within 20 working days of Final Administrative Action in the matter in which the individual is an Interested Party.

(2) Complaints filed with the Department are deemed filed on the date actually received by the Department. The Department shall date-stamp all Complaints on the date received. All filing and other time periods are based upon the Department's working days.

(3) Complaints must contain specific facts and allegations of Misconduct and must be signed by the person filing the Complaint or by the person's authorized representative. Complaints shall also contain the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if a party or person is being represented.

(4) The Department will give written notice to both the complainant and Respondent ALJ when a Complaint is received.

R477-101-402. Investigation.

(1) Preliminary Investigation.

(a) The Department shall review all timely filed Complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a Preliminary Investigation.

(b) If the Preliminary Investigation determines that the Complaint is untimely, frivolous, without merit of, or if the Complaint merely indicates disagreement with the Respondent ALJ's decision, without further alleged Misconduct, the Complaint may be similarly dismissed without further action.

(c) If, after a Preliminary Investigation is completed, there is a reasonable basis to find Misconduct occurred, the Investigator shall initiate a Full Investigation.

(2) Full Investigation.

Within ten days after a determination to conduct a Full Investigation is made, the Investigator shall notify the Respondent ALJ that a Full Investigation is being conducted. The notice shall:

(a) inform the Respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;

(b) inform the Respondent ALJ that the investigation may

be expanded if appropriate;

(c) invite the Respondent ALJ to respond to the Complaint in writing within 10 working days;

(d) include a copy of the Complaint, the Preliminary Investigation report(s), and any other documentation reviewed in determining whether to authorize a Full Investigation; and

(e) unless continued by the Chair, Full Investigations shall be completed within three months of the determination to conduct a Full Investigation.

R477-101-403. Full Investigative Findings.

Results of the investigation shall be provided to the Chair, who shall determine whether to convene a Committee Meeting.

R477-101-501. Notice.

(1) If after review of the Full Investigative result and findings the Chair determines the Complaint is factually or legally insufficient to establish Misconduct, the Chair shall similarly dismiss the Complaint and take no further action.

(2) If after review of the Full Investigative result and findings the Chair determines the Complaint requires further action, the Chair shall convene the Committee and order a Committee Meeting be scheduled.

(3) After convening the Committee the Chair shall provide Respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the Committee Meeting. The Chair shall also provide the Respondent ALJ with a copy of the Complaint and the results of the Department's investigation.

(4) Notice that a Committee has been convened and a Committee Meeting ordered shall be made by personal service or certified mail upon the Respondent ALJ or the Respondent ALJ's representative. Service of all other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the Chair that a Committee has been convened the Respondent ALJ may provide the Committee a written response to the Complaint.

(6) After receipt of the Respondent ALJ's response of after expiration of the time to respond the Committee shall, in consultation with the ALJ, schedule a Committee Meeting. The Committee shall notify the ALJ in writing of the date, time, and place of the Committee Meeting. Unless continued for Good Cause, Committee Meetings shall be held within four months of the date a Committee is convened on a Complaint.

(7) No later than 20 days before the scheduled Committee Meeting the Chair shall provide the Respondent ALJ with copies of all documents proposed for use at the Committee Meeting or to be relied upon in making its report and recommendation.

(8) Respondent ALJ shall be entitled to representation at every stage of the Committee proceedings or the Committee Meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in Committee proceedings.

R477-101-502. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.

If the Respondent ALJ resigns or retires during the proceedings, the Committee shall determine whether to proceed or dismiss the proceedings.

R477-101-503. Committee Meetings.

(1) The Chair shall rule on all motions or objections raised during a Committee Meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The Chair may limit the time allowed for the presentation of information, may bifurcate any and all issues to be considered, and may make any and all other rulings regarding any Committee proceeding or Committee Meeting.

(2) To hold a Committee Meeting there must be at least 3

members of the Committee present.

(3) The Respondent ALJ shall be permitted to present information to, make statements and produce witnesses for the Committee's consideration.

(4) Committee members may ask questions of any witness including the Respondent ALJ.

(5) Immediately following the conclusion of the Committee Meeting, the Committee shall deliberate and decide whether there is sufficient evidence the Respondent ALJ violated the Code of Conduct or otherwise engaged in Misconduct. Any such decision shall require a majority vote of the participating Committee members.

(6) Committee decisions shall be supported by a preponderance of the evidence.

(7) Within 30 days of the conclusion of the Committee Meeting, the Chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action(s), and shall forward the decision and recommendation to the Respondent ALJ and the agency head of the Respondent ALJ.

(8) After deliberation, if the Committee finds insufficient evidence or reason to determine Misconduct occurred, the complaint shall be dismissed.

R477-101-504. Discipline.

(1) At any time after the commencement of a Full Investigation and before any Committee action, the ALJ may admit to any or all of the allegations in exchange for a stated sanction. The admission shall be submitted to the Committee for a recommendation.

(2) Any corrective and/or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or state rule(s) governing discipline.

R477-101-505. Reinstatement of Proceedings.

(1) Reinstatement upon Request by Complainant.

(a) If a Complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

(c) A determination not to reinstate the Complaint is not reviewable.

(2) Reinstatement by the Chair.

(a) If the Committee dismisses a Complaint, the Chair may, at any time upon the receipt of newly discovered evidence, request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which the reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

R477-101-601. Performance Standard.

(1) The following minimum performance standards shall apply to all ALJ's:

(a) The ALJ shall have no more than one agency disciplinary action or one Committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) The ALJ shall receive an average score of no less than 65% on each survey category as provided in Utah Code 67-19e-106.

(2) For any question that does not use the numerical scale, the Committee shall establish the minimum performance

standard. Any established performance standard shall be substantially equivalent to the standard required by Utah Code Section 67-19e-105.

R477-101-602. Performance Surveys.

(1) Initial performance surveys shall be conducted by the department beginning January 1, 2014, based on current ALJ's assignment effective date. Current ALJ's will be divided into four approximately equal groups based on length of tenure in the ALJ position. The most tenured group will be surveyed first, with the next tenured group being surveyed beginning January 1 of the following calendar year, until the four-year survey cycle is established.

(2) Survey results shall be maintained by the department and shall not be maintained in the ALJ's personnel file.

(3) Survey results shall be made available to the ALJ's supervisor for consideration in completing annual performance evaluations.

**KEY: administrative law judges, conduct committee
January 14, 2014 67-19e-101 through 67-19e-109**

R512. Human Services, Child and Family Services.**R512-41. Qualifying Adoptive Families and Adoption Placement.****R512-41-1. Purpose and Authority.**

(1) The purpose of this rule is to define the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a family or individual who completes Child and Family Services training for prospective adoptive parent(s) and is approved by a licensed child placement agency or by Child and Family Services.

(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(c) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(d) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(e) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including kin or Child and Family Services employees, must meet all of the following requirements, pursuant to Rule R512-40:

(a) Complete the adoption training program approved by Child and Family Services;

(b) Be assessed and approved as adoptive parent(s) following completion of a home study by a licensed child placement agency or by Child and Family Services;

(c) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards, or receive a written waiver from Child and Family Services of a standard;

(d) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-41-4. Adoption Evaluation Requirements.

(1) An adoption evaluation must be consistent with the standards of the Child Welfare League of America (the evaluation may be done by a licensed child placement agency or Child and Family Services) and must include the following:

(a) An autobiography or psychosocial information gathered from the prospective adoptive parent(s) and family members;

(b) A behavioral assessment of the prospective adoptive parent(s) and children living at home;

(c) A statement that applicants are not cohabiting in a relationship that is not a legal marriage and are in compliance with Section 78B-6-117;

(d) A health status verification of the prospective adoptive parent(s) and children living at home;

(e) A verification of financial status;

(f) An assessment of home safety and health;

(g) A criminal background check of all adults present in the home, including a national fingerprint-based check of prospective adoptive parents that is approved according to criteria specified in Section 62A-2-120;

(h) A screening of all adults present in the home against

the child abuse data base, including for prospective adoptive parents a check of child abuse registries in any states in which the prospective adoptive parents have resided in the five years prior to application to adopt;

(i) An assessment of the prospective adoptive parent(s) parenting skills;

(k) Recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) In the matching process, the selection of the adoptive parent(s) will be in the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, the adoption committee should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

(7) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

(8) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

(9) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).

(10) Child and Family Services gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.

R512-41-6. Adoption Decision.

(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court has freed the child for adoption.

(2) When the child is not residing with the family that will adopt the child, Child and Family Services will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The adoption committee is also responsible for recommending removal of the child from a placement.

(3) The adoption committee will consist of at least three members to include senior-level Child and Family Services staff

and one or more members from an outside agency with expertise in adoption or foster care.

(4) Anyone who has information regarding the child and the potential matching families may be invited by the adoption committee to present information but not to participate in the deliberations. The adoption committee will reach its decision through consensus. If consensus cannot be reached, the adoption committee will submit their recommendation to the Region Director. The Region Director may confer with the Child and Family Services Director for the final decision.

(5) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

(6) Any member of the adoption committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

(7) Child and Family Services will send written notification of selection to the adoptive parent(s).

(8) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Release of all documents is subject to the Government Records Management Act. The prospective adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.

(9) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).

(10) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

(11) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.

R512-41-7. Information Regarding the Adoptive Parent(s).

(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

R512-41-8. Placement.

(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.

(2) The adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. Child and Family Services will inform the adoptive parent(s) of community services and adoption assistance available before and after the adoption is final.

(3) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive parent(s), including frequent visits with the child for at least the first six months after placement.

(4) Child and Family Services' supervision will continue until the adoption is final.

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

(3) When removal is recommended, the adoption committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The Region Director will review and approve the decision.

(4) If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).

(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-10. Adoption Finalization and Post Adoption.

(1) Before an adoption is final, the adoption assistance committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Adoption Registry, Section 78B-6-144.

KEY: child welfare, adoption

July 22, 2013

Notice of Continuation January 28, 2014

62A-4a-102

62A-4a-105

62A-4a-205.6

R512. Human Services, Child and Family Services.**R512-75. Rules Governing Adjudication of Consumer Complaints.****R512-75-1. Introductory Provisions.**

(1) Purpose and Authority.

(a) The purpose of this rule is to define consumer complaint procedures, intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

(b) This rule is authorized by Section 62A-4a-102.

(2) Definitions.

(a) The definitions contained in Section 63G-4-103 apply. In addition, the following terms are defined for the purposes of this section:

(i) "Absorbable within Child and Family Services' appropriation authority" means those expenditures that fall within Child and Family Services' budgetary parameters.

(ii) "Aggrieved Person" or "Complainant" means any person who is alleged to have been adversely affected by an act or omission of Child and Family Services or its employees.

(iii) "Child and Family Services" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.

(iv) The "Department" means the Department of Human Services.

(v) The "Director" means the Director of Child and Family Services.

(vi) "Office of the Child Protection Ombudsman" means the office, separate from Child and Family Services, designated by the Department to investigate a consumer complaint regarding Child and Family Services.

(vii) "Ombudsman Service Review Analyst" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

(viii) "Reasonable time" means the time specified in the action plan.

R512-75-2. Procedures for Filing an Initial Informal Non-adjudicative Complaint With Child and Family Services.

(1) An aggrieved person shall first make a reasonable attempt to resolve a complaint with a caseworker and the caseworker's supervisor. If resolution is not reached, a complaint may be filed with the regional office.

(2) If there is a filing of an initial complaint with a regional office:

(a) The complainant or aggrieved person shall make a complaint within six months from the date of the alleged circumstances giving rise to the complaint. A complaint may be made in any form.

(b) Each complaint shall:

(i) include the aggrieved person's name, address, and phone number;

(ii) describe Child and Family Services' alleged act or omission in sufficient detail to inform Child and Family Services of the nature and date of the alleged event.

(iii) describe the action desired; and

(c) The complaint shall be provided to the Child and Family Services regional designee. The region shall have ten working days from the date of the filing of the complaint to submit a response to the complaint.

(3) Investigation of the Complaint by the Regional Office.

(a) Complaints received by Child and Family Services' Constituent Services Office will be forwarded to the regional office or appropriate Child and Family Services staff to address the complaint. The regional office or state specialist will contact the complainant and address the complaint. The Child and Family Services regional office or Child and Family Services staff may hold meetings of the concerned parties. The review shall be conducted to the extent necessary to assure that all

relevant facts are reviewed. If the complaint is resolved no further action is necessary.

(b) Within 20 calendar days of receiving the complaint, the regional office or Child and Family Services staff shall issue a written decision to the Child and Family Services Constituent Services Office, setting forth its action plan to address the complaint.

(c) If a complaint filed with a regional office is not adequately addressed, the complaint shall be forwarded to the Child and Family Services Constituent Services Office.

(d) A complaint filed with the Child and Family Services Constituent Services Office that is not resolved to the satisfaction of the complainant shall be forwarded to the Office of the Child Protection Ombudsman. Child and Family Services shall immediately notify the aggrieved person in writing that the complaint is being forwarded to the Office of Child Protection Ombudsman. Child and Family Services will forward copies of all correspondence regarding the steps taken by Child and Family Services to address the complaint to the Office of Child Protection Ombudsman.

R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if Child and Family Services is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman according to the requirements of R515-1, Processing Complaints Regarding the Utah Division of Child and Family Services.

R512-75-4. Compliance with and Appeal of Recommendations of the Office of the Child Protection Ombudsman.

(1) Once the Office of the Child Protection Ombudsman completes an investigation according to the provisions of R515-1 and if recommendations are made to Child and Family Services, Child and Family Services has ten calendar days to agree with the recommendations.

(2) If Child and Family Services does not agree with the recommendation, Child and Family Services may file an appeal to the recommendations of the Office of the Child Protection Ombudsman within ten calendar days of receipt of the recommendations from the Office of Child Protection Ombudsman. The appeal shall be filed with the Department Executive Director and request that the recommendations be amended.

KEY: consumer hearing panel, grievance procedures**September 15, 2010****62A-4a-102****Notice of Continuation January 28, 2014****63G-2-304****63G-2-305****63G-2-603****63G-4 et seq.**

**R512. Human Services, Child and Family Services.
R512-306. Out-of-Home Services, Transition to Adult Living
Services, Education and Training Voucher Program.**

R512-306-1. Purpose and Authority.

(1) The Education and Training Voucher Program assists individuals in out-of-home care to make a more successful transition to adulthood. The Education and Training Voucher program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

(2) The Education and Training Voucher Program is authorized by Public Law No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (January 3, 2007) are also incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-306-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) Institution of higher education means a school that:

(i) Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

(ii) Provides not less than one year of training towards gainful employment, or

(iii) Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

(A) Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Sections 53A-11-101 and 53A-11-102).

(B) Public or non-profit facility; and

(C) Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

(b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

(c) GED means General Education Development.

(d) Child and Family Services means the Division of Child and Family Services.

(e) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

(f) Out-of-home care means substitute care for children in the custody of the Department of Human Services/Division of Child and Family Services and/or Native American Tribes.

(g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

R512-306-3. Scope of Program.

(1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

(a) An individual in out-of-home care who has not yet reached 21 years of age, or

(b) An individual no longer in out-of-home care, but who received 12 months of Transition to Adult Living services after the age of 14 years while in out-of-home care and the court terminated reunification, or

(c) An individual no longer in out-of-home care who reached 18 years of age while in out-of-home care and who has not yet reached 21 years of age, or

(d) An individual adopted from out-of-home care after reaching 16 years of age and who has not yet attained 21 years of age, and

(e) Has an individual educational assessment and individual education plan completed by Child and Family

Services or their designee;

(f) Submits a completed application for the Education and Training Voucher Program;

(g) Is accepted to a qualified college, university, or vocational program;

(h) Applies for and accepts available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

(i) Enrolls as a full-time or part-time student in the college, university, or vocational program; and

(j) Maintains a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

(2) The application and attachments will be reviewed and approved by regional Transition to Adult Living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when Education and Training Voucher Program funding is available. If demand exceeds available funding, Child and Family Services may establish a waiting list, which will then be awarded to the applicants in the order received on a first-come first-serve basis for funding or Child and Family Services may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided.

(3) If an application for benefits under the Education and Training Voucher Program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section 63G-4-301.

(4) The individual may participate in the Education and Training Voucher Program until:

(a) The completion of the degree or vocational program; or

(b) The individual reaches age 21 years.

(c) If an individual attains age 21 years while enrolled in the Education and Training Voucher Program, the individual may continue in the program until age 23 years as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time or part-time, is making satisfactory progress, and funding continues to be available. The individual must make a written request and receive a written approval prior to his or her 21st birthday to be continued for eligibility for the Education and Training Voucher Program.

(5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to Child and Family Services in order to continue receiving benefits under the program.

(6) A program participant who receives less than a 2.0 GPA in a single grading period will be placed on probationary status and,

(a) The individual will receive written notice of the probationary status. The individual will have one subsequent grading period to regain or show significant progress toward a 2.0 GPA to continue in the program.

(b) Upon completion of a satisfactory grading period, the participant will be notified that the probation period is over.

(c) The participant that does not receive satisfactory grades while on probation will receive written notice of loss of eligibility for the Education and Training Voucher Program.

(7) An individual under age 21 years who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress may reapply for the program at any time.

(8) An individual may receive vouchers up to a maximum amount of \$5,000 per year through the Education and Training

Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

(a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

- (i) Expected contributions from the individual's family; and
- (ii) Estimated financial assistance from other State or Federal grants or programs.

(b) Awards are subject to the availability of Child and Family Services Education and Training Voucher Program funds appropriated for this program.

(c) In accordance with 42 USC 677, the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

KEY: out-of-home care, Transition to Adult Living

December 22, 2010

62A-4a-102

Notice of Continuation January 28, 2014

62A-4a-105

63G-4-301

R590. Insurance, Administration.**R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.****R590-96-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Sections 31A-2-201, and 31A-17-505.

R590-96-2. Purpose.

The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table (a), the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, the 2012 Individual Annuity Reserving (2012 IAR) Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

R590-96-3. Definitions.

A. As used in this rule "Period Table" means a table of mortality rates applicable to a given calendar year.

B. As used in this rule "Generational Mortality Table" means a mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a period table and a projection scale containing mortality improvement factors.

C. As used in this rule "1983 Table (a)" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation, adopted by the NAIC in June 1982 as a recognized mortality table for annuities, and published in the 1982 Proceedings of the NAIC II, page 454.

D. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities, adopted by the NAIC in December 1983 as a recognized mortality table for annuities, and published in 1984 Proceedings of the NAIC I, pages 414-415.

E. As used in this rule "1994 GAM Table" means the 1994 Group Annuity Mortality Static Table, a period table containing loaded mortality rates for calendar year 1994, developed by the Society of Actuaries Group Annuity Valuation Table Task Force, and published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), pages 898-899.

F. As used in this rule "Projection Scale AA" means that table of annual mortality improvement factors for projecting future mortality rates beyond calendar year 1994, developed by the Society of Actuaries Group Annuity Valuation Table Task Force, and published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), 824-826.

G. As used in this rule "1994 GAR Table" means the 1994 Group Annuity Reserving Table, a generational mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force, derived from a combination of 1994 GAM Table and the Projection Scale AA as described in Subsection R590-96-7, adopted by the NAIC in December 1996 as a recognized mortality table for annuities, and published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), pages 866-867.

H. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research adopted by the NAIC in December 1996 as a recognized mortality table for annuities, and published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), page 240.

I. As used in this rule "2012 IAM Period Table" means that period table containing loaded mortality rates for calendar year 2012, developed by the Society of Actuaries Committee on Life Insurance Research, and published in the 2012 Proceedings of the NAIC, Fall Volume I, pages 149-150.

J. As used in this rule "Projection Scale G2" means that table of annuity mortality improvement factors for projecting

future mortality rates beyond calendar year 2012, developed by the Society of Actuaries Committee on Life Insurance Research, and published in the 2012 Proceedings of the NAIC, Fall Volume I, pages 151-152.

K. As used in this rule "2012 IAR Table" means that generational mortality table developed by Society of Actuaries Committee on Life Insurance Research, derived from a combination of the 2012 IAM Period Table and the Projection Scale G2 as described in Subsection R590-96-5, adopted by the NAIC in December 2012, and published in the 2012 Proceedings of the NAIC, Fall Volume I, pages 149-152.

L. The tables identified in R590-96-3.C through K, are hereby incorporated by reference within this rule and are available at the department's website <https://insurance.utah.gov/legal-resources/rules/current-rules.php>.

R590-96-4. Individual Annuity or Pure Endowment Contracts.

A. Except as provided in Subsections R590-96-4.B through E, the 1983 Table (a) is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 2, 1980.

B. Except as provided in Subsections R590-96-4.C through E, either the 1983 Table (a) or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.

C. Except as provided in Subsections R590-96-4.D and E, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1999.

D. Except as provided in Subsection R590-96-4.E, the 2012 IAR Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

E. The 1983 Table (a) without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after July 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

- (1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- (2) Settlements involving similar actions such as worker's compensation claims; or
- (3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

R590-96-5. Application of the 2012 IAR Table.

A. In using the 2012 IAR Table, the mortality rate for a person age x in year $(2012 + n)$ is calculated as follows: $q_x^{2012+n} = q_x^{2012} (1 - G2_x)^n$, where q_x^{2012} is a mortality rate applicable to a person age x in the 2012 IAM Period Table and $G2_x$ is an annual mortality improvement factor applicable to a person age x in the Projection Scale G2.

B. The resulting mortality rate q_x^{2012+n} shall be rounded to six decimal places.

R590-96-6. Group Annuity or Pure Endowment Contracts.

A. Except as provided in Subsections R590-96-6.B and C, the 1983 GAM Table, the 1983 Table (a) and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 2, 1980

under a group annuity or pure endowment contract.

B. Except as provided in Subsection R590-96-6.C, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1999 under a group annuity or pure endowment contract.

R590-96-7. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ is calculated as follows: $q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$; where the q_x^{1994} is a mortality rate applicable to a person age x in the 1994 GAM Table and AA_x is an annual mortality improvement factor applicable to a person age x in the Projection scale AA.

R590-96-8. Separability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances may not be affected by it.

KEY: insurance law

January 21, 2014

Notice of Continuation August 22, 2012

31A-2-201

31A-17-505

R590. Insurance, Administration.**R590-269. Individual Open Enrollment Period.****R590-269-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-30-117(1)(c) wherein the commissioner is directed to adopt a rule to establish one statewide open enrollment period for the individual insurance market that is not part of the Federally Facilitated Marketplace.

R590-269-2. Purpose and Scope.

(1) The purpose of this rule is to establish an open enrollment period for a carrier that offers an individual health benefit plan outside the Federally Facilitated Marketplace.

(2) This rule applies to a carrier that offers an individual health benefit plan outside the Federally Facilitated Marketplace with an effective date on or after January 1, 2014.

R590-269-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions apply for the purpose of this rule.

(1) "Federally Facilitated Marketplace" means an exchange set up by the federal government to facilitate the purchase of individual health insurance in accordance with the Patient Protection and Affordability Care Act (PPACA).

(2) "Qualifying life event" means an event that triggers a special enrollment period because an individual or dependent:

(a) loses minimum essential coverage;

(b) gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption;

(c) enrollment or non-enrollment is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee or agent of an exchange or the United States Department of Health and Human Services, or its instrumentalities as evaluated and determined by an exchange;

(d) adequately demonstrates to the individual carrier that the health benefit plan in which he or she is previously enrolled substantially violated a material provision of its contract in relation to the enrollee;

(e) is newly ineligible for advance payment of premium tax credits; or

(f) permanently moves into a new service area.

(2)(a) "Loss of minimum essential coverage" means those circumstances described in 26 CFR 54.9801-6(a)(3)(i) through (iii).

(b) Loss of minimum essential coverage does not include termination or loss due to:

(i) failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage; or

(ii) situations allowing for a rescission as specified in 45 CFR 147.128.

R590-269-4. Open and Special Enrollment Periods.

(1)(a)(i) Except as otherwise provided herein, the initial open enrollment period for an individual health benefit plan outside the Federally Facilitated Marketplace is October 1, 2013 through March 31, 2014.

(ii) The open enrollment period in Subsection (a)(i) shall be extended to be consistent with the open enrollment period for the Federally Facilitated Marketplace if the United States Department of Health and Human Services extends the open enrollment period for the Federally Facilitated Marketplace beyond March 31, 2014.

(iii)(A) Coverage begins on January 1, 2014 for individuals who enroll on or before December 15, 2013.

(B) After December 15, 2013, if an individual enrollment occurs between the first and the fifteenth of the month, coverage is effective the first day of the following month. If enrollment

occurs between the sixteen and the last day of the month, then coverage is effective the first day of the second following month.

(b) After the initial enrollment period in Subsection (a), the open enrollment period is annually from October 15 through December 7 for a coverage effective date of January 1 the immediately following year.

(2)(a) An individual carrier shall offer to an individual experiencing a qualifying life event, a special enrollment period for at least 60 days.

(b) In the case of birth, adoption or placement for adoption, the coverage is effective on the date of:

(i) birth;

(ii) adoption; or

(iii) placement for adoption

(c) Coverage is effective the first day of the month following the date the insurer receives the request for special enrollment in the case of:

(i) marriage;

(ii) an individual or dependent loses minimum essential coverage;

(iii) an individual or dependent's enrollment or non-enrollment is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee or agent of an exchange or the United States Department of Health and Human Services, or its instrumentalities as evaluated and determined by an exchange ;

(iv) an individual adequately demonstrates to the individual carrier that the health benefit plan in which he or she is previously enrolled substantially violated a material provision of its contract in relation to the enrollee; or

(v) an individual permanently moves into a new service area.

(3) Nothing in this rule prohibits an insurer from offering open or special enrollment periods in addition to the open and special enrollment periods required by this rule.

R590-269-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-269-6. Enforcement Date.

The commissioner will begin enforcing this rule 30 days from the rule's effective date.

R590-269-7. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: individual open enrollment period

January 13, 2014

31A-30-117

R651. Natural Resources, Parks and Recreation.**R651-411. OHV Use in State Parks.****R651-411-1. Definitions.**

(1) "OHV" means "off-highway vehicle" and includes the following vehicle types:

- (a) Four-wheel drive automobiles or trucks;
- (b) All-terrain vehicles (ATVs) designed to carry one or two passengers; and
- (c) Snowmobiles.

R651-411-2. OHV Use-Restrictions.

(1) OHVs are to be used only in designated areas.

(2) Designated ice areas for OHV use are only those ice areas that are accessed via the boat ramps to public ice fishing areas. These areas are at Bear Lake, East Canyon, Escalante, Hyrum, Jordanelle, Millsite, Otter Creek, Palisade, Piute, Red Fleet, Rockport, Scofield, Starvation, Steinaker and Yuba state parks.

(3) Responsibility for any accidents or problems while using OHVs in state parks rests with the user.

KEY: off-highway vehicles

July 19, 2004

Notice of Continuation January 2, 2014

41-22-10

79-4-501

R651. Natural Resources. Parks and Recreation.
R651-636. Procedures for Application to Receive Funds From the Zion National Park Restricted Account.

R651-636-1. Rulemaking Authority.

UCA, Section 63-11-67(6c), states that in accordance with Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, the division may make rules providing procedures and requirements for an organization to apply to the division to receive a distribution, under Subsection (5).

R651-636-2. Restricted Account.

This rule, as stated in H.B. 348, which enacted 63-11-17 Utah Code Annotated 1953, (2008 General Session), and that supports the Zion National Park Support Programs Restricted Account, provides procedures and process to obtain a special license, and indicates those who may be issued a special group license plate and the categories which apply.

R651-636-3. Application Process.

In order to receive funds from the Zions National Park Restricted Account, an applicant must be listed in a category found in Section 41-1a-422. The division shall receive and distribute voluntary contributions collected under Section 41-1a-422 in accordance with Section 63-11-67.

R651-636-4. Distribution Requests.

All distribution requests shall include the following documentation:

1. A signed and approved Zion National Park Donation Request form.
2. A signed copy of any agreement(s) and/or amendment(s) to agreements with Zions National Park.
3. In conjunction with Zions National Park and the Utah Department of Natural Resources (DNR), an audit review of each project may be requested and performed by DNR or Utah State Parks and Recreation staff.

R651-636-5. Application Review and Approval.

The Division of State Parks and Recreation will review and approve applications for disbursement of funds from the Restricted Account that is set up for receiving donations from those who are granted a Zion National Park Special Group License Plate.

KEY: parks

March 26, 2009

Notice of Continuation January 6, 2014

79-4-404

41-1a-422

R651. Natural Resources, Parks and Recreation.**R651-700. Administrative Procedures for Real Property Management.****R651-700-1. Authority.**

These rules establish administrative procedures for real property under the management and/or ownership of the State of Utah, Division of Parks and Recreation ("State Parks") real property, as set forth in Utah Code Ann. Title 79, Chapter 4. State Parks, through the Parks Board, may establish rules for the acquisition, planning, protection, operation, maintenance, development, and wide use of scenic beauty, recreation utility, historic, archeological, or scientific interest, to the end that the health, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

R651-700-2. Purpose.

These rules are intended:

- (1) To establish standards and procedures for acquisition, disposal, and exchange of Division lands consistent with law of the State of Utah.
- (2) To provide procedure for granting of rights-of-way, easements and special use permits, and other non-recreational use of Division lands.
- (3) To ensure consistency and efficiency of land management in order to maximize benefits to the Division and provide accountability to the citizens of Utah.
- (4) To protect real property assets, which are fixed assets of the State of Utah, in compliance with applicable laws, rules and policies.

R651-700-3. Application.

These rules are applicable statewide for real property transactions but they shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R651-700-4. Definitions As Used in This Section.

- (1) "Applicant" means any person applying for a Right-Of-Way (ROW), Easement, Lease, Special Use Lease, and Special Use Permit.
- (2) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.
- (3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.
- (4) "Authorized Area" is the area of Division-owned land, which the Division allows a development to occupy, or person to use through a ROW, Easement, Lease, Special Use Lease, and Special Use Permit.
- (5) "Board of Parks and Recreation" is the policy making body of the Division of State Parks and Recreation.
- (6) "Communications Facility" means towers, antennas, dishes, buildings, and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross over or under State Parks to serve a communications facility shall be governed by the administrative rules for granting Easements as set forth in R651-700.
- (7) "Department" means the Department of Natural Resources.
- (8) "Development" means any structure built on State Parks land.
- (9) "Director" is the agency head of the Division in whom ultimate legal authority is vested or their designee.
- (10) "Division" is the Division of Parks and Recreation, also referred to as "State Parks", Division and State Parks may be used interchangeably, as appropriate.
- (11) "Division Land" is land owned and/or managed by the

Division or its agents.

(12) "Easement" means an interest in land owned by another party, entitling the holder of said interest to limited use of enjoyment of the others land.

(13) "Executive Director" means the executive Director of the Utah Department of Natural Resources.

(14) "Fair Market Rental Value" is the annual amount in cash a willing tenant would pay, and a willing landlord would charge for the same or similar lands for the highest and best use of the property.

(15) "Lands and Environmental Coordinator" is the Division employee responsible for real property planning, documentation, analysis, reports, agreements, databases, and coordination.

(16) "Lease" means an agreement that authorizes use of real property for a specific term and purpose, under specified conditions for a fee.

(17) "Paleontological Resources" means the remains or traces of organisms, plant or animal, which have been preserved by various means.

(18) "Park Manger" is the management official for one or more state parks.

(19) "Rights-of-Way (ROW)" means the right or privilege, acquired through contract or other legally accepted means, to pass over a designated portion of the property of another.

(20) "Real Property" is land under water, upland, and all other property commonly or legally defined as real property (as set forth in Utah Code Ann. Section 79-4-203).

(21) "Real Property Asset" means the land surface, air above, and ground below, including all appurtenances to the land including buildings, structures, fixtures, fences and improvements erected on or attached to the same. Real property assets include any and all the interests, benefits, and rights inherent in the ownership of real estate.

(22) "Region" means a geographical grouping of state parks for management purposes. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(23) "Region Manager" is a manager of a geographic assemblage of state parks. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.

(24) "Resource Management Plan" is a plan prepared for the current and future management of a state park or recreational resource such as trails, boating safety, or off-highway vehicles.

(25) "Special Use Lease" is a written authorization issued by the Division to a person to use a specific area of Division Land for a special use under specific terms and conditions for a term of one (1) to fifteen (15) years.

(26) "State Park" means unique areas or real property in Utah set aside by the Utah State Government to preserve scenic beauty, recreational utility, historic, archeological, or scientific interest, to the end that the healthy, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

(27) "Special Use Permit" means a temporary authorization for a specific, non-depleting land use including but not limited to seismic or land surveys, research sites, or time-certain physical access o Division Lands. This contract vehicle is of a lesser order than a lease or Easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.

(28) "Structure" means anything placed, constructed, or erected on Division Land.

R651-700-5. Obtaining an Opinion of Value.

- (1) When acquiring, exchanging, or selling Division Lands

the Division may determine the value of real property utilizing any or all of the following methods:

- (a) Broker's Estimate;
 - (b) Market Analysis, including but not limited to an appraisal, broker's estimate, market conditions analysis, and market demand analysis; and
 - (c) Appraisal.
- (2) An Appraisal, Broker's Estimate, or Market Analysis may not be required if:
- (a) Transactions involve water rights;
 - (b) Transactions involve federal lands or federal funding, where federal guidelines take precedence over the provisions of this rule;
 - (c) The market value of the subject property interest is less than One-Hundred Thousand Dollars (\$100,000), as estimated by the Division;
 - (d) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;
 - (e) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer;
 - (f) An appraisal has been conducted on the subject property interest within the past twelve months;
 - (g) The subject property interest is being conveyed through an auction;
 - (h) The real property interest is a gift, contribution, or donation to the Division; or
 - (i) The real property interest is less-than-fee interest or not perpetual; or
 - (j) When the Director has determined by a written finding, that the cost of obtaining the appraisal is not justified, or in the best interest of the State of Utah.
- (3) When values other than market value are considered in addition to or in place of an appraisal; or are considered in addition to, or in place of, an opinion of value rendered by a broker or sales agent; the Division shall create and keep a memo-to-file describing the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange.

R651-700-6. Land Acquisition.

- (1) The Division may acquire real property through any and all legal means in order to fulfill its mission and legislative mandate.
- (2) Acquisition of real property may be made by all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the Director, Executive Director and the Governor of the State of Utah.
- (3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.
- (4) Eminent domain acquisition shall be in the manner authorized by Utah Code Ann. Title 78B, Chapter 6, Part 5.
- (5) The Division shall prepare an analysis of the proposed acquisition that provides the Director with the benefits of the acquisition to the Division, including an opinion as to whether or not the Division is the appropriate manager of the resource to be acquired.
- (6) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.
- (7) The Division shall make every effort to acquire subsurface mineral, water and any other rights attached to the land.
- (8) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a),

before acquiring any real property, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(9) Pursuant to Utah Code Ann Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(10) Proposed purchases of real property, or donations of such, shall be inspected on-site by a team consisting of the local park manager, region manager, Lands and Environmental Coordinator and others as designated by the Director.

(11) When acquiring lands the Division may determine the value of real property according to the policies contained in R651-700-5.

(12) A title report and/or land survey may be performed on all land acquisitions, at the discretion of the Director.

(13) After receiving the preliminary title report the Lands and Environmental Coordinator may request a review by the Attorney General's office.

(14) The closing of a real property transaction may be conducted at a title company. If a title company is used for closing, the Division shall instruct the company to record the deed, and after recording, send it to the Lands and Environmental Coordinator.

R651-700-7. Disposal of Real Property.

- (1) The Division may dispose of real property in order to fulfill its mission and legislative mandate.
- (2) Unless otherwise directed by the legislature, all land disposals shall be brought before the Parks Board for consultation, and shall have the final approval of the Director.
- (3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.
- (4) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed sell as required by Utah Code Section 9-8-404.
- (5) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.
- (6) When selling real property the Division may determine a minimum selling price according to the policies contained in R651-700-5.
- (7) Prior to completion of sale, lessees and permittees shall be notified an leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.
- (8) The Division may sell real property to the public, upon approval of the Parks Board, through a competitive bid process to achieve the Division's goals.
 - (a) The Division may announce the sale of real property to the public by commercially feasible methods, to include publication in one or more newspapers of general circulation in the county in which the sale is proposed, at least 30 days or more in advance of the deadline for bid submittals.
 - (b) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information, which may create interest in the sell. The Division shall also identify the desired form of compensation, whether monetary, in-kind or both.
 - (c) Sealed bids shall be accepted no sooner than 14 days following the first sale notice. Competing bids shall be evaluated and the highest bid selected unless the highest bid does not meet the minimum value. In the case of a tie bid, the highest bidders shall be offered the opportunity to participate in

an oral bidding process.

(d) Once a successful bidder has been determined, a certificate of sale shall be prepared by the Lands and Environmental Coordinator and reviewed by the Assistant Attorney General assigned to represent the Division. A title company may provide the final closing arrangements, at the cost of the purchaser.

(e) The successful bidder shall pay the remaining balance at the time of closing and shall be responsible for all closing costs.

(f) When there are no successful bidders on the property, the unsold parcels may be:

- (i) Listed with a realtor
- (ii) Offer the property on a "first-come first-served" basis for a period of up to three years following the bid opening date; or
- (iii) Auction the property.

R651-700-8. Land Exchanges.

(1) The Division may exchange real property in order to fulfill its mission and legislative mandate.

(2) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property through exchange, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.

(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(4) Pursuant to Utah Code Ann. Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.

(5) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed exchange as required by Utah Code Section 9-8-404.

(6) Prior to completion of exchanges, lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.

(7) When exchanging lands the Division may determine the value of real property according to the policies contained in R651-700-5.

(8) The criteria for exchange proposals are evaluated as follows:

(a) Real property owned by the Division may be exchanged for private and/or public properties of equal or greater recreation or monetary value in both acreage and monetary worth if the exchange shall benefit the Division's park system. The Division may exchange real property for other assets if the exchange benefits the park system.

(b) Verification shall be made that the exchange shall not result in an unmanageable and/or uneconomical parcel of Division Land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

(c) Proposed exchanges of real property shall be inspected on-site by a team consisting of the local Park Manager, Region Manager, Lands and Environmental Coordinator and others as designated by the Director.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.

(f) The Division, at its discretion, may at any time cancel any and all negotiations for a land exchange.

(9) If the Division is offered a land exchange, an application shall be filed with the Division, and evaluated by the Division with the follow additional criteria:

(a) A completed application form shall be submitted with an application-processing fee established by the Division.

(b) Incomplete applications may be denied and the application fee forfeited to the Division.

The Applicant shall provide a property description, preferably a metes and bounds survey, a county plat map of all properties to be considered for the exchange. A map shall be provided indicating the relationship of the properties to Division Land.

(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.

(e) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(f) Upon receipt of an exchange application, the Division may solicit competing exchange property or assets. Competing applications may be solicited through publication, at least once a week for three consecutive weeks, in one or more newspapers of general circulation in the county in which the park is located. The Division may allow all applicants at least 20 days from the date of mailing of notice to submit a sealed bid containing their proposal for the subject parcel.

(g) The Director may approve or disapprove any exchanges based on information solicited through the application process. The Director may also waive the application for good cause.

(h) If competing proposals are received, the Division shall choose the successful applicant by evaluating each proposal for its contribution toward attainment of Division management objectives.

(i) The successful applicant may be charged an amount equal to all appraisal, appraisal reviews, advertisement, staff time, and other costs to the Division. The Director, for good cause shown by the applicant, may waive such costs.

R651-700-9. Right-Of-Way (ROW), Easements, Special Use Leases, and/or Special Use Permit.

(1) The Division may enter into real property transactions in order to fulfill its mission and legislative mandate.

(2) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.

(3) Potential applicants for ROW, Easements, Special Use Lease, Special Use Permit may contact the park manager or regional manager prior to making a formal application to the Lands and Environmental Coordinator.

(4) To apply for a ROW, Easement, Special Use Lease a person shall:

(a) Complete and submit an application provided by the Division to the Lands and Environmental Coordinator, unless it is an application for a Special Use Permit, in which case it shall be submitted to the appropriate park manager;

(b) Pay a non-refundable application fee;

(c) If for the purpose of construction or occupancy, submit the application and application fee at least 120 days prior to the proposed construction or occupancy date, unless otherwise specified by rule;

(d) Provide a map, aerial photograph, or other guide to the project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

(i) Anyone desiring to perform a survey on Division Land with the intent of filing an application for an ROW, Easement or Special Use Lease shall prior to entry for surveying activities,

file with the agency an application for a Special Use Permit. The permit shall include a description of the proposed survey project, including the purpose, general location, and potential resource disturbances of the proposed survey. The appropriate park manager or his delegate shall review the application.

(e) Provide evidence of an ownership or leasehold interest in the estate where development of that estate is the purpose for applicants seeking a ROW or Easement.

(f) Include a project plan with the following information:

(i) Project alternatives, including alternatives not affecting the Division;

(ii) Project alternatives not affecting Division Land which were considered but rejected, and the specific reasons those alternatives were rejected;

(iii) A description of the proposed activity, structures, and/or infrastructure, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. the description shall be sufficiently detailed as to provide an accurate and complete representation of the proposed actions;

(iv) Identification of adverse impacts to public recreation and scenic values associated with the proposed use and how they shall be avoided, minimized, or mitigated;

(v) Other essential information required by the Lands and Environmental Coordinator and/or the Division.

(5) Upon receiving the application, application fee, and the information required in Subsection (4) above, the Lands and Environmental Coordinator may either deny the application or grant a conditional approval within 60 days.

(6) If the application is denied, the Lands and Environmental Coordinator shall provide a written notice to the applicant.

(7) Before final approval is granted the Division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed ROW and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the Easement, ROW or Special Use Lease Area that is compatible with, and requires no editing for accurate downloading into geographic systems information software used by the Division.

(c) Evidence that the applicant had given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.

(d) An impact assessment analyzing the potential direct, indirect, and cumulative effects the proposed project may have on public recreation opportunities, scenic values, wildlife, and wildlife habitat.

(e) A survey of threatened, endangered and candidate plant and animal species. Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

(h) A survey of the project to determine if wetlands shall be impacted. The project applicant is responsible for obtaining all federal Clean Water Act Section 404 permits. If wetlands are found, the applicant must provide sufficient mitigation to offset any damage to the wetland area.

R651-700-10. Division Assessment of the Applications for ROWs, Easements, and Special Use Leases.

(1) Upon receipt of an application for a ROW, Easement or Special Use Lease, the Division shall determine;

(a) If the application is complete;

(b) If the subject area is available for the requested use; and

(c) The method to be used to determine the amount of compensation payable to the Division.

(2) The Division shall then advise the applicant of its determination concerning each of the three factors in Section (1). Applications determined by the Division to be incomplete, or for an area in which the use would be incompatible shall be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within ninety (90) calendar days for the date the Division returned it to the applicant (as determined by the date of postmark), no additional application fee will be assessed.

(4) The Division may reject applications for ROWs or Easements that would be more appropriately authorized by a Special Use Lease.

(5) Upon acceptance by the Division, the application may be circulated to various local, state, and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and Easement holders for review and comment. As part of this review, the Division shall specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species) And archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with other local, state, and federal laws and rules;

(c) Conformance of the proposed use with a state park comprehensive land use plan, resource management plan, operation plan, business plan, and/or zoning ordinances;

(d) Conformance with existing state park rules, policies, and guidelines;

(e) Potential conflicts of the proposed use with existing leases, permits or Easement holders.

(6) If the application is for a communications facility, the Division may request comments from the Federal Communications Commission, Public Utility Commission, and any other person's owning/leasing communications facilities that advise the Division that they want to receive such applications.

(7) After receipt of agency and public comment concerning the proposed use, the Division shall advise the applicant in writing:

(a) If changes in the use or the requested lease or permit area are necessary to respond to agency or public comment;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(i) State or federal listed threatened and endangered species (including candidate species) within the requested area;

(ii) Archeological and historic resources within the requested area; and/or

(iii) Wetlands.

(c) In the case of a Special Use Lease, if the area requested for lease will be authorized for use by the applicant through a Special Use Lease, or be made available to the public through competitive bidding pursuant to R651-700-12.

R651-700-11. Compensation for ROW, Easements, Leases and Special Use Leases.

(1) In establishing the amount of annual compensation, or minimum bid at auction, the Division shall:

(a) Adhere to the policies contained in R651-700-5 of these rules;

(b) Whenever practicable, base the amount of annual compensation on the fair market rental value received by property owners for similar property used in a similar manner;

(c) Require the holder of a Special Use Lease for a communications facility to annually remit to the Division both;

(i) The full amount of the base annual compensation required by their lease, and

(ii) A payment, the amount to be determined by the Division on a case-by-case basis, of the rental received by the lessee during the previous calendar year from the sublessees using the subject facility authorized by the lease.

(d) In the event that reliable data concerning fair market rental value are not available, the Division shall select another method of determining the amount of annual compensation, or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop value, or percent of product produced.

(e) Rents for ROW, Easements, and leases are based on the costs incurred by the Division and fair market value. Fees are based on the current fee schedule that can be obtained from the Lands and Environmental Coordinator.

R651-700-12. Competitive Bidding Process for Special Use Leases.

(1) The Division shall determine on a case-by-case basis if an area requested for a Special Use Lease shall be offered to the public through competitive bidding. This decision shall be made after considering:

(a) Whether the area requested for a Special Use Lease or permit is Division Land;

(b) The nature of the use and length of authorization requested;

(c) The availability of reliable data regarding the fair market rental value of the subject parcel for the proposed use; and

(d) Whether other applications are received by the Division to use the same area requested for the same or competing uses.

(2) If the Division determines that the greatest benefit to the public recreation and/or the Division would be achieved by offering the subject area through competitive bidding, it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted.

(3) The Notice of Leasehold Availability shall state;

(a) The location and size of the subject area;

(b) The user(s) approved by the Division for the subject area;

(c) The type of auction and minimum acceptable bid amount;

(d) What developments, if annex on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Division; and

(e) The deadline for submitting a completed application to the Division.

(4) The Notice of Leasehold Availability shall be:

(a) Published at the applicant's expense not less than once each week for two (2) successive weeks in a newspaper of general circulation in the county(ies) in which the subject parcel is located;

(b) Posted on the Division Internet website; and

(c) Sent to persons indicating an interest in the subject parcel.

(5) The highest qualified bidder shall be awarded the lease at auction subject to satisfaction of the requirements of R651-700- (9 and 10) of these rules. The Division, however, shall have the right to reject any and all bids submitted.

R651-700-13. Right-Of-Way (ROW), Easements, Special

Use Leases - Final Determination.

(1) The Director may deny any application if:

(a) The application does not include all the information required;

(b) The potential impact to public recreation, cultural/historic resources, view shed, wildlife habitat, or water quality is unacceptable;

(c) The proposed project contravenes the Recreation Management Plan or site master plan;

(d) The applicant has not, in the opinion of the Division, adequately considered ways to avoid or minimize impacts or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

(e) There are, in the opinion of the Division, alternative locations reasonably available on lands not owned by the Division for the requested use including organized events that may harm public recreation, wildlife, wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails;

(f) The application's project affects property in which a third party has contractual or legal oversight rights and the project is rejected by that party; or

(g) The applicant is in default on any previous obligation to the Division.

(2) If the application is rejected, the Division shall provide a written notice to the applicant.

(3) A ROW, Easement or Special Use Lease may include provisions requiring the applicant to:

(a) Restore all structures, including but not limited to fences, roads, and existing facilities, and regard as nearly as practical to the pre-project grade and contour, and re-vegetate the impacted area to Division specifications;

(b) Adhere to the terms of the applicant's approved project plan prescribed in subsection R651-700-9(4)(f);

(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation and all other expenses associated with the project; and

(d) Provide all permits and clearances for the project.

(4) Prior to the issuance of an Easement, ROW, Special Use Permit or Special Use Lease or for good cause shown at any time during the term of the agreement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the Easement, ROW, Special Use Permit or Special Use Lease.

(5) Easements, ROW, Special Use Permits and Special Use Leases issued by the Division shall be on a form supplied by the Division that has been approved for legal sufficiency.

(6) If the Division decides to issue a ROW, Easement, or Special Use Lease to the applicant without competitive bidding, the written notice will also indicate;

(a) The amount of compensation that the applicant shall remit to the Division to obtain authorization;

(b) Any insurance and/or surety bond required by the Division pursuant to the requirements of R651-700-16; and

(c) A draft copy of the ROW, Easement, or Special Use Lease.

(7) The Division shall not grant an Easement, ROW, Special Use Permit or Special Use Lease to the applicant until it has received all fees and compensation specified in these rules, and evidence of any required insurance and/or surety bond.

(8) The Director may refer any applications for a Special Use Lease to the Parks Board for review and approval.

R651-700-15. Easement, ROW, Special Use Permit or Special Use Lease - General Terms and Conditions.

(1) A ROW or Easement may be granted for a maximum of thirty (30) years from the date of the signing. The Division may grant such real property interests for shorter time periods. The Director may provide an exception, in whole or in part, to the rules for use of Division land and other recreational areas for an Easement, ROW, Special Use Permit, or Special Use Lease granted pursuant to this section. The exception may be provided by a written decision issued by the Director and shall be effective for the term or such lesser period of time specified by the Director.

(2) The term of a Special Use Lease shall not exceed fifteen (15) years. The Division shall determine the length of a special use lease based on the nature of the use intended for the requested site. The Division may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Division.

(3) The term of a Special Use Permit shall not exceed one (1) year. A Special Use Permit may, at the discretion of the Division, be renewed up to two (2) times for a maximum term of ninety (90) days each time.

(4) Special Use Leases and Special Use Permits shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use.

(5) The lessee or permittee may request the Division to close all or portions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, and/or crops from harm.

(6) The Division or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious weed or pest abatement, or for wildfire control.

(7) The lessee, grantee or permittee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) A lessee, grantee or permittee may not interfere with lawful public use of an authorized area, or obstruct free transit across Division Land, or intimidate or otherwise threaten or harm public users of Division Land.

(9) Upon the expiration or termination of a ROW, Easement, Special Use Lease or Permit, the holder shall remove any or all developments as directed by the Division within sixty (60) calendar days of the date of termination of the Easement, ROW, lease or permit. Any developments remaining on the area authorized by the Easement, Row, lease or permit after the sixty (60) day period shall become the property of the Division. If the grantee, lessee or permittee refuse to remove the subject developments, the Division may remove them and charge the grantee, lessee or permittee for doing so.

(10) The holder of a Special Use Lease or permit shall not allow any other use to be made of, or occur on the site or vicinity that is not specifically authorized:

- (a) By that lease or permit; or
- (b) By the Division in writing prior to the use.

R651-700-16. Insurance and Bond - Easement, ROW, Special Use Lease, Special Use Permit.

(1) The Division may require a grantee, lessee or permittee to obtain insurance in a specified amount if the use, in the opinion of the Division, constitutes a risk to public safety, or to the State of Utah.

(2) The Division may request that the applicant, grantee, lessee or permittee provide information concerning the use of the area to the Risk Management, which may assist the Division in determining the appropriate amount of insurance coverage based on the nature of the use.

(3) All bonds posted on Easements, leases, ROW, or permits may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for

compliance with all other terms and conditions of the Easement, and rules pertaining to the Easement. The bond shall be in effect even if the grantee has conveyed all or part of the Easement interest to a sub lessee, assignee, or subsequent operator until the grantee fully satisfies the Easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(4) Bonds may be increased in reasonable amounts, at any time as the Division may decide, provided grantor first gives grantee 30 days written notice stating the increase and the reasons(s) for the increase.

(5) Bonds may be accepted in any of the following forms at the discretion of the Division:

(a) Surety bond with an approved corporate surety registered in Utah;

(b) Cash deposit. However, the Division shall not be responsible for any investment returns on cash deposits;

(c) Certificate of deposit in the name of "The Division of State Parks and Recreation and applicant, c/o Applicant's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the grantee shall be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the applicant prior to acceptance by the Director; or

(d) Other forms of surety as may be acceptable to the Division.

R651-700-17. Assignment of ROW, Easement, Special Use Leases and Special Use Permits, Subleasing.

(1) A ROW, Easement or Special Use Lease in good standing is freely assignable.

(2) Special Use Permits are non-assignable.

(3) To assign a ROW, Easement or Special Use Lease, the lessee shall submit a:

(a) Notice of proposed assignment on a form provided by the Division; and

(b) Non-refundable assignment processing fee payable to the Division.

(4) The Division shall make every effort to complete its review of such proposed assignments within thirty (30) calendar days of receipt of the notice. The Division may request additional information concerning the proposed assignment.

(5) A sublease or assignment may be made only to a person, firm, association, or corporation qualified to do business in the State of Utah, and which is not in default under the laws of the State of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the Division.

(6) A lessee wanting to offer a sublease to another person shall:

(a) Obtain prior written authorization from the Division by applying to the Division on a form provided by the Division, and

(b) Submit to the Division rent, in an amount to be determined by the Division on a case-by-case basis, at the end of the calendar year.

(7) A sublease or assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee/lessee, any conditions in the assignment to the contrary notwithstanding.

(8) A sublease or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should be clearly set forth the lease or contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party.

A copy of the documents subleasing or assigning the interest shall be given to the Division.

(9) A sublease or assignment shall be executed according to Division procedures.

(10) A sublease or assignment is not effective until approved by the Division.

R651-700-18. ROW, Easement, Special Use Leases and Special Use Permits - Unauthorized Uses and Penalties.

(1) Uses and developments subject to, but not authorized by a ROW, Easement, Special Use Lease or Special Use Permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law, the placement of any development on, or use of Division Land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

R651-700-19. Termination of a Special Use Lease or Special Use Permit for Default.

(1) If the lessee or permittee fails to comply with these rules or other lease terms and conditions, or otherwise violates laws covering the use of his/her authorized area, the Division shall notify the lessee or permittees in writing of the default and demand correction within a specified time frame.

(2) If the lessee or permittee fails to correct the default within the time frame specified, the Division may:

(a) Modify or terminate the lease or permit, and/or

(b) Request the Attorney General to take appropriate legal action against the lessee or permittee.

R651-700-20. Abandonment or ROW, Easement, or Lease.

(1) If within 365 days of the date of execution of a ROW, Easement or lease a grantee/lessee fails to construct and install the infrastructure which necessitate the grantee/lessee's acquisition of a ROW, Easement or lease, or the grantee/lessee otherwise fails to use all of any portion of a ROW, Easement or lease, that portion of the ROW, Easement or lease so unused shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW or lease shall be terminated with no compensation due from the Division.

(2) If proof of grantee/lessee's use of all or portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease shall be terminated with no compensation due from the Division.

R651-700-21. ROW, Easement, Special Use Leases and Special Use Permits - Reconsideration of Decision.

(1) An applicant or any other person adversely affected by the issuance of denial may request that the Director or the parks Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.

(b) If the Director made the decision of concern, she/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(c) If the decision was made by the parks Board, the

Director may recommend to the parks Board either that the Special Use Lease or permit issuance or denial be modified based on the merits of the request.

R651-700-22. Water Rights.

(1) It is the policy of the Division of Parks and Recreation to use its water resources for beneficial purposes in support of public recreation, including but not limited to, protecting scenic attractions and recreational values for the present and future citizens of Utah.

**KEY: property
October 27, 2009**

Notice of Continuation January 6, 2014

**79-4
79-4-203
79-4-203.5(a)**

R655. Natural Resources, Water Rights.**R655-13. Stream Alteration.****R655-13-1. Authority.**

(1) The following rule is established under the authority of Section 73-3-29. Additional procedures may be required to comply with other governing state statute, federal law, federal regulation, or local ordinance.

R655-13-2. Purpose.

(1) The purpose of this rule is to clarify the procedures necessary to obtain approval by the state engineer for any project that proposes to alter a natural stream within the state of Utah. Approval does not grant access, authorize trespass, or supercede property rights.

R655-13-3. Applicability.

(1) These rules apply to all stream alteration projects within the state of Utah.

R655-13-4. Definitions.

(1) Alteration: To obstruct, diminish, enhance, destroy, alter, modify, relocate, realign, change, or potentially affect the existing condition or shape of a channel, or to change the path or characteristics of water flow within a natural channel. It includes processes and results of removal or placement of material or structures within the jurisdiction delineated in this rule.

(2) Bankfull discharge: The flow corresponding to the elevation of the water surface, in a natural stream, where overflowing onto the floodplain normally begins.

(3) Bank(s): The confining sides of a natural stream channel, including the adjacent complex that provides stability, erosion resistance, aquatic habitat, or flood capacity.

(4) Bed: The bottom of a natural stream channel.

(5) Canopy: Mature riparian woody vegetation, usually referring to limb and leaf overhang.

(6) Channel: The bed and banks of a natural stream.

(7) Clearance: The vertical distance between a given water surface and the lowest point on any structure crossing a natural channel.

(8) Ecology: A branch of science concerned with the interrelationship of organisms and their environment.

(9) Ecosystem: The assemblage of organisms and their environment functioning as an ecological unit in nature.

(10) Floodplain: The maximum area that will accommodate water when flow exceeds bankfull discharge.

(11) Flowline: The lowest part of a streambed when viewed in cross-section.

(12) Fluvial: 1: Of, relating to, or living in a stream or river. 2: Produced by stream action.

(13) Gradient: Elevation change per unit length.

(14) Natural stream: Any waterway, along with its fluvial system, that receives sufficient water to sustain an ecosystem that distinguishes it from the surrounding upland environment.

(15) Reference reach: A portion or segment of a natural stream channel that shows little or no indication of alteration.

(16) Revegetation: The planting of salvaged plants, containerized plants, cuttings, seeds, or other methods to produce a desired plant community.

(17) Riparian corridor: The vegetation zone associated with a natural stream environment.

(18) Riprap: Preferably hard, well-graded, angular rock, sufficient in size and density to remain stationary during high flows.

(19) State Engineer: Director of the Division of Water Rights.

(20) Waterway: A topographic low that collects and conveys water.

R655-13-5. Jurisdiction.

(1) For the purposes of determining the need to obtain an approved stream alteration application, it is necessary to review the criteria outlined in Section 73-3-29(4)(a). The items, and thus the adopted jurisdictional limits, must be investigated by the state engineer before making a determination on a proposed stream alteration. The state engineer shall conduct investigations that may be reasonably necessary to determine whether the proposed alteration will:

(a) impair vested water rights. In order to determine if vested water rights could be impaired, it is necessary to determine if: stream flows are being modified; the geometry of the bankfull channel will change; or the proposal will have any effect on the diversion, collection, or distribution appurtenances associated with the water right within the jurisdictional limits presented in sections R655-13-5(1)(b) below. In evaluating a proposed stream alteration, the state engineer must consider the proposal's impact on any diversion, collection or distribution structure associated with the water right. By necessity, the jurisdictional limit must be evaluated on a case-by-case basis and must assess those appurtenances to the actual diversion structure which could be affected even though they are located outside of the channel.

(b) unreasonably or unnecessarily affect any recreational use or the natural stream environment. The natural stream environment consists of the stream, the conveyed water, the adjoining vegetative complex, and the habitat provided by the abutting riparian zone. Evaluation of impacts to recreational use must factor in the hydrology of the stream, manmade structures detrimental to recreational use and the riparian zone's ability to keep the system erosion resistant. The jurisdictional limit to be used to evaluate the impacts on recreational use and the natural stream environment will be the greater of the two as follows:

(i) The observed riparian zone or canopy drip line of a undisturbed reference reach; or

(ii) Two times the bankfull width from the bankfull edge of water in a direction perpendicular to the flow and away from the channel up to a maximum of 30 feet.

(c) unreasonably or unnecessarily endanger aquatic wildlife. Any changes made to a natural stream that affect the geometry, water quality, flows, temperature, and vegetative cover may endanger aquatic wildlife. The jurisdictional limit, when considering the impacts to aquatic wildlife, is taken to be contained within the limit established under R655-13-5(1)(b).

(d) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows. Changes in cross-sectional geometry, grade, surface roughness, sediment load, in-stream structures, levees, and floodplain development, can have an influence on a channel's ability to conduct high flows. The objective in evaluating a stream's ability to conduct high flows is not to attempt to provide a certain level of protection (i.e. 100 year event), but rather to make sure that the losses in the natural stream's carrying capacity are minimized. It is important to recognize that the hydraulic capability of a natural stream, at a section on the stream, is a three dimensional issue and alterations at a point can change the carrying capacity of the stream both upstream and downstream of the actual stream alteration. The jurisdictional area, when considering the channel's hydraulic capacity, must include the bankfull stream channel and in many cases portions of the floodplain which have been observed conducting or storing water during high flow events or show physical evidence of conducting or storing water during high flows.

(2) Any work proposed in any of the preceding identified jurisdictional limits will require an approved stream alteration application.

R655-13-6. Application Requirements.

(1) Blank application forms are available through the Division of Water Rights or on the Division of Water Rights website. In addition to the information requested on the application, the following information shall be submitted with the application, if applicable:

- (a) A rehabilitation plan for areas disturbed during construction activities;
- (b) Hydraulic calculations on which the design of the proposed alteration is based;
- (c) A description of the construction methods to be employed; and
- (d) Any other information the state engineer determines is necessary to evaluate the proposal.

(2) Incomplete applications will be returned to the applicant.

R655-13-7. Specific Stream Alteration Activities.

(1) The following subsections address specific types of stream alteration activities and the nature of special information that shall be provided to the state engineer. These subsections are not intended to be comprehensive and other requirements may be imposed at the discretion of the state engineer.

(a) Applications that propose to install a utility (sewer, water, fiber-optic cable, etc.) beneath a natural stream will be subject to the following conditions and requirements:

(i) Applicants will be required to explore the utilization of directional drilling or jacking methods where year-round flows exist. Where directional drilling or jacking is not feasible, the applicant will be required to submit detailed plans showing how flow will be diverted away from the area during construction (use of coffer dams, temporary culverts, etc.) and how the channel will be rehabilitated to its pre-alteration state following installation of the utility.

(ii) Bedding and backfill material placed over and around the utility shall not be more free-draining than the adjacent bed, bank, and riparian area materials and shall be compacted to in-place densities at least as great as those of similar adjacent materials. In some circumstances, cutoff collars may be required.

(iii) Utility crossings under natural streams shall be placed with the top of the utility a minimum of three (3) feet below the existing natural elevation of the streambed. In some instances, a greater depth may be required if there is significant evidence of on-going erosion.

(iv) Where utility crossings occur on river bends or areas of significant on-going bank erosion, the utility shall be kept at an elevation below that of the bed of the stream, laterally away from the stream, to a distance where erosion will not expose the utility at a later date.

(b) Applications that propose to span natural streams by way of bridges or other structures will be subject to the following conditions and requirements:

(i) Submission of consideration for the use of existing stream crossings as an alternative to construction of a new bridge or span.

(ii) Construction of the bridge abutments shall not encroach on the bankfull stage of a natural stream.

(iii) Clearance of the lowest part of the span shall be a minimum of three (3) feet above bankfull stage unless specifically exempted by the state engineer.

(c) Applications that propose installation of a culvert or other similar structure will be subject to the following conditions and requirements:

(i) The applicant shall submit evidence to justify the infeasibility of constructing a bridge crossing.

(ii) The grade and elevation of the bottom (or floor) of the culvert shall not change the profile from that of the original undisturbed streambed, unless the culvert is intended to be used as a fish barrier.

(iii) The bottom of the culvert should contain natural streambed material if the natural stream contains a fishery. This may require installing the culvert flowline below the bed of the channel or installation of an open bottom culvert.

(iv) The culvert shall be sized to allow passage of flood flows and in some cases wildlife migration.

(v) The culvert design should include energy dissipation structures or devices when necessary.

(d) Applications that propose to remove or thin-out living or dead riparian vegetation will be considered if:

(i) the existing riparian vegetation consists exclusively or predominantly of non-native plant and tree species, provided that removal or thinning will not jeopardize the stability of the stream or impact wildlife habitat; or

(ii) the existing vegetation represents a flood threat to existing buildings or other permanent structures, residential areas, transportation routes, or established utilities.

(e) Dead vegetation within the channel may be removed without written authorization by the state engineer provided that removal can be accomplished by way of manual methods.

(f) Applications that propose to discharge storm water or waste water into a natural stream channel shall include plans for treating the water prior to discharge (debris box, skimmer, or other appropriate method for removing debris or any other pollutant or constituent which will impair the ecosystem health of the receiving channel) when water originates from areas containing potential waste or contaminants. Debris boxes shall be cleaned or otherwise serviced regularly. Outfall structure design shall include methods for reducing water velocities and preventing erosion (keyed-in riprap, flared end-section, baffles, etc).

(g) Applications that propose to relocate a natural stream channel will be considered if:

(i) the existing channel is degraded or impaired and relocating the channel will enhance the natural stream environment; or

(ii) the existing channel location represents a significant hazard to existing permanent structures, residential areas, transportation routes, or established utilities; and other bank stabilization methods can be shown to be inappropriate or infeasible for reducing or eliminating the hazard.

(h) Applicants that propose to relocate a natural stream will be required to submit detailed drawings of the new channel (plan, cross-section(s), and profile views) and vegetation plans for the channel and surrounding area. Monitoring of planted vegetation must be conducted and results reported to the Division of Water Rights.

(i) Applications that propose to remove beaver dams will be considered if:

(i) the dam(s) interferes with the operation or maintenance or threaten the integrity of a bridge, culvert, an authorized man-made dam, or authorized water diversion works; or

(ii) the presence of the dam(s) causes or may reasonably be expected to cause flooding of pre-existing developed areas, buildings, transportation routes, or established utilities; or

(iii) the dam(s) exists in areas of highly erosive soil or recently authorized stream restoration activities; or

(iv) the presence of the dam(s) represents a detriment to fish management.

(j) Removal of established beaver dams for the sole purpose of obtaining impounded water to supplement other water sources will be reviewed critically.

KEY: stream alterations

May 4, 2004

Notice of Continuation January 29, 2014

73-3-29

R746. Public Service Commission, Administration.**R746-350. Application to Discontinue Telecommunications Service.****R746-350-1. Purpose and Authority.**

A. Authorization -- Section 54-4-1 provides that the Public Service Commission shall have the power to regulate utilities and to supervise their business operations. Section 54-3-1 requires that the terms and conditions of the provision of service be just and reasonable.

B. Purpose -- This rule is intended to address situations where a telecommunications corporation has determined to stop providing Basic Telecommunications Service to subscribed customers in a Utah service area. The rule will provide subscribed customers an opportunity to migrate their service to an alternative service or a different provider prior to the Exiting Provider's discontinuance of the subscribed service. No telecommunications corporation may discontinue the provision of Basic Telecommunications Service to existing customers in a service area, or portions thereof, without first complying with this rule or receiving an exemption from the Commission.

R746-350-2. Definitions.

Terms -- The meaning of the terms used in this rule shall be consistent with their general usage in the telecommunications industry, Title 54 of the Utah Code or as defined below:

A. "Basic Telecommunications Service" means the telecommunications services defined as Basic Telecommunications Service in Rule 746-360-2.C.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities.

D. "Exiting Provider" means a telecommunications corporation that seeks to stop or eliminate providing Basic Telecommunications Service to subscribed customers in a service area, or portion thereof, located in Utah. It does not include a telecommunications corporation that discontinues telecommunications service as a result of the customer's request or pursuant to the provisions of other rules or orders of the Commission. It does not include a temporary change in the provision of service that may arise from maintenance, repair or failure of a telecommunications corporation's equipment or facilities.

E. "Intended Date of Discontinuance" means the date upon which an Exiting Provider intends to discontinue providing Basic Telecommunications Service pursuant to this rule.

F. "Replacement Provider" means a telecommunications corporation that undertakes providing Basic Telecommunications Service to customers of the Exiting Provider after the Exiting Provider is permitted to discontinue service.

R746-350-3. Application and Notice.

A. Application -- Unless subject to R746-350-4.E for exclusive facilities, an Exiting Provider shall file an application with the Commission and the notices identified hereafter not less than 50 days prior to the Intended Date of Discontinuance.

B. Notices -- An Exiting Provider shall provide written notice to the following:

1. the Division;
2. subscribed customers that will be affected by the discontinuance of service;
3. telecommunications corporations providing the Exiting Provider with resold telecommunications services, essential facilities or services, or unbundled network elements (UNEs), if they are part of or used to provide Basic Telecommunications Service to the Exiting Provider's affected customers; and
4. the national number administrator, when applicable, authorizing the release of all unassigned telephone numbers unless the Exiting Provider establishes a need to retain the

telephone numbers.

R746-350-4. Application and Notice Contents.

A. Application -- The application to the Commission required by R746-350-3.A must include:

1. applicant's name, complete mailing address, including street, city, state, and zip code, telephone number, e-mail address, and the names under which the applicant is providing telecommunications service in Utah;

2. name, mailing address, telephone number and e-mail address of a person or persons, designated by the Exiting Provider, to contact for questions about the application;

3. identification of the associated service territory, or portion thereof, proposed for discontinuance;

4. the Intended Date of Discontinuance, which shall not be sooner than 50 days after the date on which the Exiting Provider files the application with the Commission;

5. acknowledgment that by signing the application, the applicant and its successors understand and agree that:

- a. filing of the application does not, by itself, constitute authority to discontinue any service;

- b. discontinuance shall occur as ordered by the Commission; and

- c. the Exiting Provider shall assist in the porting of any assigned telephone numbers to a Replacement Provider.

6. an affidavit signed by an officer or principal of the Exiting Provider attesting under penalty of perjury that the contents of the application are true, accurate, and correct; and

7. a copy of the notices required in this rule.

B. Notice to the Division -- The notice to the Division required in R746-350-3.B.1 shall be a copy of the application submitted to the Commission.

C. Notice to Customers -- The notice to customers required in R746-350-3.B.2 must, at a minimum, include:

1. the Intended Date of Discontinuance on which Basic Telecommunications Service is planned to be discontinued; and

2. information on how to contact the Exiting Provider by telephone in order to obtain information such as how customers may receive a refund on any unused service or how to contact regulatory agencies to obtain information on possible replacement providers. The Exiting Provider shall continue to provide refund information, via a customer service number, for 60 days after the date of discontinuance of service;

D. Notice to Other Companies -- The notice to other companies required in R746-350-3.B.3 must, at a minimum, include:

1. the Intended Date of Discontinuance of Basic Telecommunications Service; and

2. telephone contact information to enable other companies to obtain additional information regarding the discontinuance of service.

3. Until chosen as the Replacement Provider, telecommunications corporations receiving notices under R746-350-3.B.3 may not use information contained in the notices to initiate marketing efforts unless the information is first made available to other telecommunications corporations for their marketing efforts.

E. Earlier Notice for Exclusive Facilities -- Notwithstanding the requirements set forth in R746-350-3.A and R746-350-4.A.4, if an Exiting Provider has ownership or control of the only facilities readily available to provide Basic Telecommunications Service to customers so that another telecommunications corporation would either need to acquire control of those facilities or install its own facilities in order to serve the customers of the Exiting Provider, then the following shall be required:

1. The Exiting Provider shall provide notice to the Commission, the Division and to telecommunications corporations identified in the Commission's list of certificated

telecommunications companies at least 120 days prior to its Intended Date of Discontinuance. The notice shall grant other telecommunications corporations 40 days to respond indicating any interest in obtaining the facilities and their transfer.

2. The Exiting Provider shall file its application to discontinue service with the Commission at least 75 days prior to the Intended Date of Discontinuance.

3. The Commission shall determine the timing of any further proceedings, including the timing of further notices.

F. Notice to the National Number Administrator -- Unless the Exiting Provider has established a need to retain the telephone numbers, the notice required in R746-350-3.B.4 shall include identification of all telephone numbers assigned to customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers will be available for reassignment.

R746-350-5. Commission Proceedings upon Application to Discontinue Service.

A. Proceeding -- The Commission will act upon an application to discontinue service within the time period ending on the Intended Date of Discontinuance. If an Exiting Provider fails to comply with this rule and customers have not had an adequate opportunity to obtain a replacement telecommunications service or locate a Replacement Provider, if one exists, the Exiting Provider may be required to continue to provide service until the earlier of: the date on which a Replacement Provider is able to provide service, or a date ordered by the Commission. The Commission may use the proceedings on an Exiting Provider's application to resolve disputes between the Exiting Provider and a possible Replacement Provider to facilitate the migration of the Exiting Provider's customers to alternative telecommunications services that may be available. The Commission may use the proceeding to address requirements of R746-349-5, Utah Code Section 54-8b-18, or any other requirements associated with a change in service providers.

B. Liability -- Nothing in this rule, however, shall be construed as shielding the Exiting Provider from any legal liability to its customers or any other person or entity, whether the liability is grounded in contract, tort or otherwise, including any obligation for any interconnection payment required to maintain service to the Exiting Provider's customers.

C. Rates or Terms -- Nothing in this rule shall require the Replacement Provider to provide any service at rates or on terms other than those published in the Replacement Provider's tariffs, price lists, or contract with the customer.

D. Obligation -- Nothing in this rule obligates the Replacement Provider to undertake any obligation of the Exiting Provider. To the contrary, unless expressly agreed in writing or ordered by the Commission, it shall be presumed that the Replacement Provider has not undertaken any obligation of the Exiting Provider.

KEY: exiting provider, replacement provider, telecommunications, services

January 15, 2004

54-4-1

Notice of Continuation January 13, 2014

54-3-1

R865. Tax Commission, Auditing.**R865-7H. Environmental Assurance Fee.****R865-7H-1. Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5.**

(1) Retailers or consumers who are owners or operators of tanks, including owners or operators of above-ground storage tanks, who do not participate in the Environmental Assurance Program, may receive an exemption from the environmental assurance fee if:

(a) none of the owner's or operator's tanks are covered under the Environmental Assurance Program; and

(b) the owner or operator purchases the petroleum product for the tank directly from the refinery, or purchases a direct import of a petroleum product for which the environmental assurance fee has not previously been imposed.

(2) Retailers or consumers who are owners or operators of tanks and who do not participate in the Environmental Assurance Program, but who fail to meet the conditions provided under this rule to purchase petroleum products exempt from the environmental assurance fee may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.

(3) For purposes of the exemption and refund provisions of this rule, owners or operators of above-ground storage tanks include owners of fuel stored in tanks owned by a third party where the owner of the fuel pays a fee for use of the tank.

(4) On a monthly basis, the Department of Environmental Quality shall provide the commission with a list of current participants in the Environmental Assurance Program.

R865-7H-2. Environmental Assurance Fee on Packaged Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.

(1) Petroleum products that are brought into this state packaged in barrels, drums, and cans are exempt from the environmental assurance fee.

(2) Individuals who purchase petroleum products in bulk quantities and subsequently repackage those petroleum products in barrels, drums, or cans may receive a refund of environmental assurance fees paid on the repackaged petroleum products if, prior to the repackaging, the products were not stored in a tank covered by the Environmental Assurance Program.

(3) Individuals who qualify for a refund of environmental assurance fees under Subsection (2) may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.

R865-7H-3. Environmental Assurance Fee on Exports of Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.

(1) Petroleum products exported from a refinery directly out of state by the refiner or the first purchaser are exempt from the environmental assurance fee.

(2) Individuals who store petroleum products in the state and subsequently export those petroleum products from the state may receive a refund of environmental assurance fees paid on the exported petroleum products if, prior to the export of the petroleum products, the petroleum products were not stored in a tank covered by the Environmental Assurance Program.

(3) Individuals who qualify for a refund of environmental assurance fees under Subsection (2) may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.

KEY: taxation, environment

August 25, 2011

Notice of Continuation January 6, 2014

19-6-410.5

R865. Tax Commission, Auditing.**R865-16R. Severance Tax.****R865-16R-1. Valuation of Metalliferous Minerals for Severance Tax Purposes Pursuant to Utah Code Ann. Section 59-5-203.**

A. Gross proceeds under Section 59-5-203 means the total consideration received by the taxpayer for the sale of metals or metalliferous minerals, including premiums, bonuses, subsidies, or non-cash consideration, with no deductions.

B. The authority for market prices under Subsection 59-5-203(1)(b) shall be an average daily price in U.S. markets, as listed in Metals Week or other market listing, for the quarter in which the products are consumed or shipped out of state. The taxpayer is responsible for calculating average daily price for each tax quarter from the market listing.

C. Valuation of metals or metalliferous minerals under Section 59-5-203(1)(c) and (1)(d) shall be determined as follows:

1. The gross value of ore shall equal the unit value of the first marketable product multiplied by the ratio of direct mining costs and divided by the total direct costs of mining, processing, and manufacturing to produce the first marketable product. This value is then multiplied by the recoverable units of the first marketable product contained in ores or concentrates. This gross value of ore is then reduced by the exemption provided for in 59-5-202(3) and in turn multiplied by the statutory rate of 80 percent to find the taxable value of ore.

2. Direct mining costs shall be those costs, including royalty payments, attributable to the extraction of minerals from their naturally occurring environment and transportation to the point of processing, use, or sale.

3. First marketable product means the first product or group of products produced by the taxpayer in the form or condition in which the product or products are first sold in significant quantities by the taxpayer or by others in the taxpayer's marketing area, provided that the metals or metalliferous mineral products are sold under a bona fide contract of sale between unaffiliated parties.

D. If the first marketable product is an ore or concentrate, an alternative method of valuation under this subsection may be used upon the mutual consent of the Tax Commission and the taxpayer. Under the alternative method, the gross value of metals or concentrates shall equal the unit value of the first marketable product multiplied by the recoverable units of metal or metalliferous minerals in ore or concentrates produced by the taxpayer during the tax period. The gross value of metals or concentrates is then reduced by the exemption provided for in 59-5-202(3) and in turn multiplied by the statutory rate for the applicable metal to find the taxable value of ore.

E. If a sale of metals or metalliferous minerals between affiliated companies is not a bona fide sale because the value received is not proportionate to the fair market value of the metals or metalliferous minerals, the minerals shall be valued using the methods described in B., C., and D. above, in that order.

KEY: taxation, mineral resources

April 23, 1996

59-5-203

Notice of Continuation January 6, 2014

R865. Tax Commission, Auditing.**R865-19S. Sales and Use Tax.****R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this rule, "item" includes:

- (a) an admission;
- (b) a product transferred electronically;
- (c) a service; and
- (d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

- (a) separately states the tax exempt items on the invoice; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

- (a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of

business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;
2. of a change of character of the business; or
3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;
2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;
3. the person fails to renew its annual business license with the Department of Commerce; or
4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to

Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or
2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in

connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

- (a) the application being performed;
- (b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for

purposes of Subsections 59-12-104(13) and (17).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) Subject to Subsection (1)(b), a lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(b) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

- (i) optional; and
- (ii) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

- (a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and
- (b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether

such charge is designated as a cover charge, minimum charge, or any such similar charge.

(b) This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for

industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not

regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-104.6.

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

(2) A purchase made by the state, its institutions, or its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

(3) A purchase is considered made by the state, its institutions, or its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with the employee's own funds and is reimbursed by the state or local entity, that purchase is not made by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and
(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;
2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or
3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact

that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the

religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah

Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is

restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any

excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed \$1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including

freight;

- b) direct manufacturing labor; and
- c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are

treated as follows:

- (i) service plan charges for labor are not taxable; and
- (ii) service plan charges for parts are taxable unless those parts are exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(4) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

- (B) are reusable;
- (C) are used in the production of printed matter;
- (D) do not become part of the final printed matter; and
- (E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

- (i) charges for printed material, even though the paper may be furnished by the customer;
 - (ii) charges for envelopes;
 - (iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;
 - (iv) charges for pre-press materials purchased tax exempt by the printer; and
 - (v) charges for reprints and proofs.
- (b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

- (i) the sale qualifies for exemption under Section 59-12-104; and

- (ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office

manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax

was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined;

or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a \$50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include

subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-211.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

(i) a purchaser uses computer software;

(ii) there is not a transfer of a copy of the computer software to the purchaser; and

(iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

(i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or

(ii) if the seller is required to collect and remit tax to the commission for the purchase, and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in accordance with Subsections 59-12-211(4) and (5); or

(iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill that are required to be paid.

(a) Tax on the required gratuity is due from a private club, even though the club is not open to the public.

(b) Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

(2) Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home,

campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

(1) Definitions.

(a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

(b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

(2) Except as provided in Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

(3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

(4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

(5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

(6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

(7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the commission:

(a) on forms provided by the commission, and

(b) at the time and in the manner sales and use tax is remitted to the commission.

(8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

(a) the name and address of the user of the taxable energy;

(b) the volume of taxable energy delivered to the user; and

(c) the entity from which the taxable energy was purchased.

(9) The information required under Subsection (8) shall be provided to the commission:

(a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the

time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The \$75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;

2. television program; or

3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

(a) medical services;

(b) boarding services; or

(c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic

medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) Graphic design services are not subject to sales and use tax:

- (a) if the graphic design is the object of the transaction; and
- (b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

- (a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and
- (b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

- A. "Clothing" includes:
1. aprons for use in a household or shop;
 2. athletic supporters;
 3. baby receiving blankets;
 4. bathing suits and caps;
 5. beach capes and coats;
 6. belts and suspenders;
 7. boots;
 8. coats and jackets;
 9. costumes;
 10. diapers, including disposable diapers, for children and adults;

11. ear muffs;
 12. footlets;
 13. formal wear;
 14. garters and garter belts;
 15. girdles;
 16. gloves and mittens for general use;
 17. hats and caps;
 18. hosiery;
 19. insoles for shoes;
 20. lab coats;
 21. neckties;
 22. overshoes;
 23. pantyhose;
 24. rainwear;
 25. rubber pants;
 26. sandals;
 27. scarves;
 28. shoes and shoe laces;
 29. slippers;
 30. sneakers;
 31. socks and stockings;
 32. steel toed shoes;
 33. underwear;
 34. uniforms, both athletic and non-athletic; and
 35. wearing apparel.
- B. "Clothing" does not include:
1. belt buckles sold separately;
 2. costume masks sold separately;
 3. patches and emblems sold separately;
 4. sewing equipment and supplies, including:
 - a) knitting needles;
 - b) patterns;
 - c) pins;
 - d) scissors;
 - e) sewing machines;
 - f) sewing needles;
 - g) tape measures; and
 - h) thimbles; and
 5. sewing materials that become part of clothing, including:
 - a) buttons;
 - b) fabric;
 - c) lace;
 - d) thread;
 - e) yarn; and
 - f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

- "Protective equipment" includes:
- A. breathing masks;
 - B. clean room apparel and equipment;
 - C. ear and hearing protectors;
 - D. face shields;
 - E. hard hats;
 - F. helmets;
 - G. paint or dust respirators;
 - H. protective gloves;
 - I. safety glasses and goggles;
 - J. safety belts;
 - K. tool belts; and
 - L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

- "Sports or recreational equipment" includes:
- A. ballet and tap shoes;
 - B. cleated or spiked athletic shoes;
 - C. gloves, including:

- (i) baseball gloves;
- (ii) bowling gloves;
- (iii) boxing gloves;
- (iv) hockey gloves; and
- (v) golf gloves;
- D. goggles;
- E. hand and elbow guards;
- F. life preservers and vests;
- G. mouth guards;
- H. roller skates and ice skates;
- I. shin guards;
- J. shoulder pads;
- K. ski boots;
- L. waders; and
- M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

- A. The computation of sales and use tax must be:
 - 1. carried to the third place; and
 - 2. rounded to a whole cent pursuant to B.
- B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.
- C. Sellers may compute the tax due on a transaction on an:
 - 1. item basis; or
 - 2. invoice basis.
- D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

- A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:
 - 1. monthly; and
 - 2. by electronic funds transfer to the municipality that imposes the tax.
- B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.
- C. The commission shall charge a municipality for the commission's services in an amount:
 - 1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
 - 2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.
- D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

- (1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.
- (2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.
- (3)(a) "Tangible personal property eligible for

capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

- (a) land;
- (b) buildings;
- (c) raw materials;
- (d) supplies;
- (e) film;
- (f) services;
- (g) transportation;
- (h) gas, electricity, and other fuels;
- (i) admissions or user fees; and
- (j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

- (a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and
- (b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant

to Utah Code Ann. Section 59-12-104.

59-12-353

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

KEY: charities, tax exemptions, religious activities, sales tax

July 26, 2012	9-2-1702
Notice of Continuation January 3, 2012	9-2-1703
	10-1-303
	10-1-306
	10-1-307
	10-1-405
	19-6-808
26-32a-101 through 26-32a-113	59-1-210
	59-12
	59-12-102
	59-12-103
	59-12-104
	59-12-105
	59-12-106
	59-12-107
	59-12-108
	59-12-118
	59-12-301
	59-12-352

R895. Technology Services, Administration.**R895-4. Sub-Domain Naming Conventions for Executive Branch Agencies.****R895-4-1. Purpose.**

The "utah.gov" identifier is intended to provide the following features to the State of Utah and its agencies.

(1) The ".gov" sub-domain identifier is controlled by the Federal .gov domain registrar, thereby protecting state interests.

(2) The State of Utah, Chief Information Officer's (CIO) office is responsible for issuance of all "utah.gov" sub-domains, further protecting the integrity of the identifier.

(3) The "utah.gov" identifier offers immediate recognition to constituents for developing credibility and confidence through a consistent interface.

(4) The "utah.gov" sub-domain simplifies constituent access to state agency services.

R895-4-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated.

R895-4-3. Scope of Application.

All state agencies of the executive branch of the State of Utah government shall comply with this rule, which provides a consistent internet access identifier for the State of Utah through the "utah.gov" sub-domain.

R895-4-4. Definitions.

(1) "Sub-Domain:" A meaningful name or "handle" for addressing computers and information on the Internet. Domain names typically end with a suffix that denotes the type or location of a resource (for instance, ".com" for commercial resources or ".gov" for government resources).

(2) URL: "Uniform Resource Locator" which is an addressing standard used to find documents and media on the Internet.

(3) "Sub-Domain Registrar" Authoritative source within the State of Utah's CIO office, or the Federal .gov registrar.

(4) TLD: Top level domain, including, but not limited to .net, .org, .com, etc.

(5) Publicize: To advertise or otherwise publicly disseminate information regarding a TLD.

R895-4-5. Compliance and Responsibilities.

(1) Any state executive branch agency that develops, hosts, or funds a website shall only register a sub-domain using the "utah.gov" naming convention.

(2) No state executive branch agency may publicize a sub-domain in a TLD such as .org, .net, .com or any other available TLD not conforming to this rule.

R895-4-6. Exceptions.

(1) The requirements of this rule do not apply to funds that are "passed-through" or contracted to a private non-profit or for-profit entity and subsequently used by that entity for its own website or for the purchase of a URL.

(2) The CIO may provide a waiver for an "extraordinary environment" for which it is demonstrated that use of the "utah.gov" identifier would cause demonstrable harm to citizens or business. Requests for waiver must be submitted with justification to the CIO by the requesting agency Executive Director.

(3) Non-Conforming TLDs may be obtained or retained solely for the purpose of re-direction to an approved "utah.gov" TLD, or to retain ownership of the TLD for avoiding identifier misuse, provided the non-conforming TLD is not publicized.

R895-4-7. Rule Compliance Management.

A state executive branch agency executive director, or designee, upon becoming aware of a violation, shall enforce the rule. The CIO may, where appropriate, monitor compliance and report to the executive director any findings or violations of this rule.

The CIO may further enforce this rule by requesting that the entity responsible for providing identifier mapping withhold or remove the offending TLD from state production servers.

KEY: utah.gov

April 15, 2004

Notice of Continuation January 14, 2014

63F-1-206

63G-3-201

R909. Transportation, Motor Carrier.**R909-3. Standards for Utah School Buses.****R909-3-1. Authority and Purpose.**

This rule is enacted under authority of Section 41-6a-1304 and 41-6a-1309 for the purpose of governing the design and operation of school buses and governing the placement of advertisements on school buses.

R909-3-2. Adoption of Standards for Utah School Buses and Operations Standards 2010 Edition.

(1) In Cooperation with the Utah State Office of Education and the Department of Public Safety, The Standards for Utah School Buses and Operations and Appendix as contained in the 2010 Edition, is incorporated by reference, except for Part, "Finance, School District".

(a) The Standards for Utah School Buses and Operations is published by the Utah State Office of Education and can be found at <http://www.schools.utah.gov/finance/DOCS/Transportation/2010-BusStandards.aspx>.

(b) The 2010 Standards Appendix is published by the Utah State Office of Education and can be found at <http://www.schools.utah.gov/finance/DOCS/Transportation/2010-StandardsAppendix.aspx>.

(2) These requirements apply to the design and operation of all school buses in this state when:

- (a) owned and operated by any school district;
- (b) privately owned and operated under contract with a school district; or
- (c) privately owned for use by a private school.

R909-3-3. Advertisement on School Buses.

(1) In addition to the restrictions listed in Section 41-6a-1309 advertisements placed on a bus may not:

- (a) cover, obscure or interfere with the operation of any required lighting, reflective tape, emergency exits or any other safety equipment;
- (b) be placed within six inches of any required markings, lighting or other required safety equipment;
- (c) resemble a traffic control device; or
- (d) be illuminated or be constructed of reflective material.

KEY: school buses, safety

August 25, 2011

41-6a-1304

Notice of Continuation January 2, 2014

R978. Veterans' and Military Affairs, Administration.**R978-1. Rule Governing Veterans' Affairs.****R978-1-1. Authority.**

(1) This rule is established pursuant to Section 71-8-2 which established the Department of Veterans' and Military Affairs. This rule is made pursuant to Title 63G, Chapter 3 of the Utah Administrative Rulemaking Act.

R978-1-2. Purpose.

(1) The purpose of this rule is to define the functions and mission of the Department of Veterans' and Military Affairs under Sections 71-8-1 through 71-11-10 and 38 CFR.

R978-1-3. Definitions.

(1) Terms used in this rule are defined in Sections 71-8-1, 71-10-1, and 71-11-2.

(2) Additional terms are defined as follows:

(a) "Homeless veteran" means a qualified veteran who is currently experiencing an episode of homelessness without a stable, regular indoor place of residence.

(b) "Nursing Home" means a State licensed facility accommodating persons who require skilled nursing care and related medical services.

(c) "Stand down" is a term derived from the Vietnam war meaning a place of safe refuge from operations where soldiers can get clean clothes, warm food, basic medical and dental care, hygiene services and camaraderie. It is here applied to the provision of these services for homeless veterans.

(d) "State Officer" means the State official authorized to oversee the operations of the State veterans nursing home.

(e) "Widow" means the unmarried spouse of a deceased veteran of either sex.

R978-1-4. Nursing Homes.

(1) The department shall administer the various state veterans' nursing homes in accordance with Title 71, Chapter 11, Utah Veterans' Nursing Home Act.

(2) Each nursing home shall have a State Officer who shall act as the department's liaison to carry out the requirements of this act.

(3) Each home shall enforce admission requirements in accordance with Section 71-11-6 as established by the department.

(4) Each home shall comply with 38 CFR 51, "Per Diem for Nursing Home Care of Veterans" for per diem payments, per diem payments for veterans with service connected disabilities, payments for drugs and medicines for certain veterans, and nursing home standards.

(5) The department may contract with reputable nursing home management firms for the day-to-day operation of the nursing homes as provided in 38 CFR 51.210. Selection shall be by a competitive bid process with criteria established by the department. The department shall establish the duration for the management contracts and other contractual terms and conditions in the best interests of the residents.

(6) Notwithstanding the authority of the management firm to employ and direct all nursing home employees, the State Officer shall be an employee of the department and shall be independent of the management firm. The State Officer shall oversee the operations of the state nursing home.

R978-1-5. Cemetery and Memorial Park.

(1) The department shall administer the state veterans' cemetery and memorial park in accordance with Section 71-7-3.

(2) Fees charged for burial expenses shall be posted at the cemetery office and on the department website. Fees charges for other funeral expenses, including headstone replacement, shall be posted at the cemetery office and on the department website.

R978-1-6. Homeless Veterans.

(1) The department shall coordinate with local, state and federal programs providing short and long term housing for homeless veterans in the state as provided in Subsection 71-8-3(1)(d).

(2) The department shall direct a stand down for homeless veterans to assist in their temporal, physical and mental needs at least annually.

R978-1-7. Education Programs.

(1) The department shall administer the State Approving Agency (SAA) for Veterans Education as directed in Subsection 71-8-3(1)(e).

(2) The SAA shall perform all duties necessary for the inspection, approval and supervision of educational programs offered by qualified educational institutions, training establishments, and tests for licensing and certification in accordance with the standards and provisions of 38 U.S.C. 30, 32, 33, 35, and 36, and 10 U.S.C. 1606 and 1607.

(3) The SSA shall provide in-depth technical assistance and outreach liaison with all related organizations, agencies, individuals and activities to help veterans and other eligible persons achieve their educational and vocational goals.

(4) The SSA shall reach out to eligible persons and inform them of their benefits through the GI Bill, which will assist veterans in making the most informed decision toward their vocational and educational goals.

(5) The SSA shall perform other duties and functions as determined by the U.S. Department of Veteran Affairs via annual contract for SSA services.

R978-1-8. State Benefits.

(1) The department shall assist veterans, their widows and dependents in procurement of all rights and benefits which may accrue to them by reason of military service to the United States in accordance with Section 71-9-1. Specifically, the department shall disseminate information on benefits to veterans and interested parties via:

- (a) community outreach
- (b) fairs, exhibits and community events
- (c) the Utah Veterans Voice newspaper and other appropriate media
- (d) the department's public website (<http://veterans.utah.gov>)
- (e) cooperative activities with other veterans organizations

(2) Specific state benefits that the department shall assist veterans and their dependents in securing include:

- (a) Disabled Veteran Property Tax Abatement
- (b) Purple Heart Tuition Waiver
- (c) Purple Heart Fee Exemption
- (d) Scott B Lundell Tuition Waiver for military members' surviving dependents
- (e) Honorary high school diplomas
- (f) Veteran's license plates
- (g) Free use of armories
- (h) Fishing license privileges
- (i) Special fun tags
- (j) America the Beautiful pass
- (k) Trax/bus reduced fare cards
- (l) Veterans Upward Bound
- (m) Such other state benefits to veterans as may be established by statute

R978-1-9. Federal Benefits.

(1) The department cannot administer any federal veterans benefit programs, but it shall provide information and assistance to veterans, their widows and dependents in understanding and navigating the rules of federal veterans' benefits. These federal benefits include:

- (a) veterans compensation and pensions
 - (b) Dependency and indemnity compensation (DIC) payments
 - (c) Disability compensation
 - (d) Home loan guarantee program
 - (e) Post 9-11 G.I. Bill
- (2) The department may contract with other military service organizations to assist veterans, their spouses, widows and dependents in securing their rights, benefits, and employment preferences as provided in Section 71-9-1.

R978-1-10. Tracking Veteran Employees.

- (1) The department shall coordinate with the Utah State Department of Human Resource Management (DHRM) to maintain current counts of the number of veterans employed by the State of Utah in each department, as provided in Subsection 71-8-3 (5). The department shall encourage state agencies and departments to properly record veteran status for all employees.
- (2) A count of veterans in state government shall be updated and kept on file at least twice per year.

R978-1-11. Record of Veterans.

- (1) The department shall create and maintain a record of veterans in Utah as provided in Subsection 71-8-3 (6).
- (2) The department shall maintain a searchable self-registration for Utah veterans on the department website.
- (3) The department shall work with the Utah Department of Information Technology, the Department of Workforce Services, and the Utah Drivers License Division to develop a searchable, digital database of Utah veterans.
- (4) The department shall secure paper and digital copies of veterans' form DD-214 to assist in creating a database of verified veterans from Utah and to assist Utah veterans in securing all available benefits.
- (5) The department shall contract, as appropriate, for technical assistance in creating and maintaining veterans' databases.

KEY: veterans' and military affairs
December 10, 2011

71-8-2

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
 - (i) a licensed medical doctor;
 - (ii) a doctor of osteopathy;
 - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or
 (v) a licensed Physician's Assistant.
 (d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony, or who are violating parole or probation for a felony or a misdemeanor, are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same

month. This is true even if household composition has changed. If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are

counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and
 (c) assisting ORS in good faith to:
 (i) establish the paternity of all minor children; and
 (ii) establish and enforce child support obligations.
 (d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States;

or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also

cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non-cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse

treatment;

(e) resolve transportation and child care needs;
 (f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and

the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice,

financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(5) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(6) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(7) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(8) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(9) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash

assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and

preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) Employment extension. An exception to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an extension under subsections (1) or (2) of this section, an additional extension can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more

than a total of 60 months unless an extension can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one

month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
 - (i) the volunteer mentor;
 - (ii) the Department; or
 - (iii) civic organizations.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be performed in accordance with the requirements of Utah Code Ann. Section 34-38-6. Before taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (1) or (3) of this section,

(b) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(c) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test

performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

- (i) at the client's expense,
- (ii) at a testing facility approved by the Department,
- (iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and
- (iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

- (a) Reasonable action would not be successful in making the asset available; or
- (b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in

accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for food stamps, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit.

The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are

not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount

of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household

was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

Household Size	Payment Amount
1	\$288
2	\$399
3	\$498
4	\$583
5	\$663
6	\$731
7	\$765
8	\$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible

Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the

time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$8 per hour. Commission only jobs may qualify if the employer guarantees \$8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a \$500 subsidy and an

additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

R986-200-249. Access to Assistance.

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/ or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

KEY: family employment program

January 14, 2014

35A-3-301 et seq.

Notice of Continuation September 8, 2010