R23. Administrative Services, Facilities Construction and Management.
R23-2. Procurement of Architect-Engineer Services.
R23-2-1. Purpose and Authority.

(1) In accordance with Subsection 63G-6-208(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.

(2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63G, Chapter 6 and Title 63A, Chapter 5.

R23-2-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63G-6-103.

(2) The following additional terms are defined for this rule.

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects or engineers of Solicitations.

(e) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

(f) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects or engineers seeking to provide architect-engineer services to the Division.

(g) "State" means the State of Utah.

(h) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

R23-2-3. Register of Architectural or Engineering Firms.

(1) Architects or engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

(2) The Division shall maintain a file of information submitted under Subsection (1).

(3) Except for services procured under Sections R23-2-17 and R23-2-19, an updated or project specific statement of qualifications shall generally be required in order to be considered in procurements of services for a specific project as provided in the solicitation.

R23-2-4. Public Notice of Solicitations.

The Division shall publicize its needs for architect-engineer services in the manner provided in Subsection R23-1-5(2). The public notice shall include:

(1) the closing time and date by which the first submittal of information is required;

(2) directions for obtaining the solicitation;

(3) a brief description of the project; and

(4) notice of any mandatory pre-submittal meetings.

R23-2-5. Submittal Preparation Time.

Submittal preparation time is the period of time between the date of first publication of the public notice, and the date and time set for the receipt of submittals by the Division. In each case, the submittal preparation time shall be set to provide architects or engineers a reasonable time to prepare their submittals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

R23-2-6. Form of Submittal.

The solicitation may provide for or limit the form of submittals, including any forms for that purpose.

R23-2-7. Addenda to Solicitations.

Addenda to the solicitation may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6), except that addenda may be issued until the selection of an architect or engineer is completed.

R23-2-8. Modification or Withdrawal of Submittals.

(1) Submittals may be modified prior to the due dates established in the solicitation.

(2) Architects or engineers may withdraw from consideration until a contract is executed.

R23-2-9. Late Proposals and Late Modifications.

Except for modifications allowed pursuant to negotiation, any proposal or modification received at the location designated for receipt of submittals after the due dates established in the Solicitation shall be deemed to be late and shall not be considered unless no other submittals are received.

R23-2-10. Receipt and Registration of Submittals.

After the date established for the first submittal of information, a register of submitting architects or engineers shall be prepared and open to public inspection. Prior to award, submittals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process, who shall adhere to the requirements of GRAMA and this rule.

R23-2-11. Disclosure of Submittals, Performance Evaluations, and References.

(1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

(2) The classification of records as protected and the treatment of such records shall be as provided in Section R23-1-35.

(3) The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsection 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R23-2-12. Selection Committee.

(1) The Board delegates to the director the authority to appoint a selection committee, which may include representatives of the Board, the Division, the using agency, and architects or engineers and the general public.

(2) Each member of the selection committee shall certify

as to his lack of conflicts of interest.

R23-2-13. Evaluation and Ranking.

(1) The selection committee shall evaluate the relative competence and qualifications of architects or engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

(a) past performance and references;

(b) qualifications and experience of the firm and key individuals;

(c) plans for managing and avoiding project risks;

(d) interviews; and

(e) other factors that indicate the relevant competence and qualifications of the architect or engineer and the architect or engineer's ability to satisfactorily provide the desired services.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms.

R23-2-14. Publicizing Selections.

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(2) Information Disclosed. The following shall be disclosed with the notice of selection:

(a) the ranking of the firms;

(b) the names of the selection committee members;

(c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and

(d) the written justification statement supporting the selection.

(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

(a) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(b) non-public financial statements.

R23-2-15. Negotiation and Appointment.

The Director shall conduct negotiations as provided for in Section 63G-6-704 until an agreement is reached.

R23-2-16. Role of the Board.

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each regular meeting of the Board, the Division shall submit a list of all architect-engineer services contracts entered into since its previous report and the method of selection used. This shall be for the information of the Board.

R23-2-17. Performance Evaluation.

(1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This evaluation shall become a part of the record of that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R23-2-11(3).

R23-2-18. Emergency Conditions.

The Director, in consultation with the chairman of the Board, shall determine if emergency conditions exist and document his decision in writing. The Director may use any reasonable method of awarding contracts for architect-engineer services in emergency conditions.

R23-2-19. Direct Awards.

(1) The Director may award a contract to an architectural or engineering firm without following the procedures of this rule if:

(a) The contract is for a project which is integrally related to, or an extension of, a project which was previously awarded to the architectural or engineering firm;

(b) The architectural or engineering firm performed satisfactorily on the related project; and

(c) The Director determines that the direct award is in the best interests of the State.

(2) The Director shall place written documentation of the reasons for the direct award in the project file and shall report the action to the Board at its next meeting.

R23-2-20. Small Purchases.

(1) If the Director determines that architect-engineer services can be procured for less than $100,000, or if the estimated construction cost of the project is less than $1,500,000, the procedures contained in Subsection (2) may be used.

(2) The Director shall select a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. The qualified firm may be, but is not required to be, selected from the register of architectural or engineering firms provided for in Section R23-2-3. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

R23-2-21. Alternative Procedures.

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. This may include the use of a design competition.

(2) Any exceptions to this rule must be justified to and approved by the Board.

(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.

KEY: procurement, architects, engineers

July 14, 2008 **63A-5-103 et seq.**

Notice of Continuation September 16, 2014 **63G-2-101 et seq.**

63G-6-208(2)

R35. Administrative Services, Records Committee.
R35-1. State Records Committee Appeal Hearing Procedures.
R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Notice Website.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements shall be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations may be permitted. Prior to the hearing, the third party shall notify the Executive Secretrary of intent to present. Third party presentations shall be limited to five minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more Committee members or parties may be participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of each Decision and Order shall be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within three business days. Access to the audio recordings shall be provided by the Executive Secretary on the Utah Public Notice Website.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings shall be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but awaiting official approval, they are a public record and must be marked as "Draft."

(d) At the next meeting, at the direction of the Committee Chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes shall be then marked as "Approved."

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access on the Utah Public Notice Website.

KEY: government documents, state records committee, records appeal hearings
September 9, 2014 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-1a. State Records Committee Definitions.
R35-1a-1. Definitions.

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to this rule:

(a) "Committee" means the State Records Committee in accordance with Section 63G-2-501, Utah Code.

(b) "Denial" means an act taken to restrict access to a government record in accordance with Section 63G-2-205 and Subsection 63G-2-403(4), Utah Code.

(c) "Executive Secretary" means the individual appointed annually as required in Subsection 63G-2-502(3), Utah Code.

(d) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a shorter time period than in accordance with Subsection 63G-2-403(4)(a).

(e) "Hearing" means a meeting by the Committee to hear an appeal of a records decision by a government entity in accordance with Section 63G-2-403, Utah Code.

(f) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63G-2-403(11), Utah Code.

(g) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63G-2-403, Utah Code.

KEY: state records committee, records appeal hearings, government documents
September 9, 2014 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-2. Declining Appeal Hearings.
R35-2-1. Authority and Purpose.

In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the State Records Committee.

R35-2-2. Declining Requests for Hearings.

(1) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee Chair and at least one other member of the Committee as selected by the Chair.

(2) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. The Committee Chair shall determine whether or not the petitioner has provided sufficient evidence. If the Committee Chair determines that sufficient evidence has been provided, the Chair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the Committee Chair determines that sufficient evidence has not been provided, the Chair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the Chair to direct the Executive Secretary to not schedule a hearing.

(3) In order to file an appeal, the petitioner must submit a copy of his or her initial records requests or a statement of the specific records requested if a copy is unavailable to the petitioner, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(4) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be retained in the file.

(5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii), Utah Code, shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.

(6) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(7) If a Committee member has requested a discussion to reconsider the decision to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and/or whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(8) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held, withdrawn, and declined.

KEY: government documents, state records committee, records appeal hearings
September 16, 2014 63G-2-403(4)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-4. Compliance with State Records Committee Decisions and Orders.
R35-4-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(14), Utah Code, this rule intends to establish the procedure for complying with an order of the State Records Committee.

R35-4-2. Notices of Compliance.

(1) The Executive Secretary of the Committee shall send an order of the Committee by certified mail to the petitioner and to the governmental entity ordered to produce records.

(2) Pursuant to Subsection 63G-2-403(14), Utah Code, each governmental entity ordered by the Committee to produce records, shall file with the Executive Secretary either a notice of compliance, or a copy of the appellant's notice of intent to appeal the Committee order, no later than the thirtieth day following the date of the Committee order.

(3) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and shall state the method and date of delivery.

(4) In the event a governmental entity fails to file a notice of compliance or a copy of the appellant's notice of intent to appeal the Committee order within the time frame specified, the Committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(5) The Committee may also impose a civil penalty of up to $500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled Committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings
September 16, 2014 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-5. Subpoenas Issued by the Records Committee.
R35-5-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the State Records Committee.

R35-5-2. Subpoenas.

(1) In order to initiate a request for a subpoena, a party shall file a written request with the Committee Chair at least 14 days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the Committee, the individual being subpoenaed must be present.

(2) The Committee Chair shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(a) a weighing of the proposed witness' testimony as material and necessary; or

(b) a weighing of the burden to the witness against the need to have the witness present.

(3) If the Committee Chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise blank, from the Executive Secretary. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(4) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(5) A subpoenaed witness may file a motion to quash the subpoena with the Executive Secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied by the Committee Chair based on the same considerations as outlined in Subsection R35-5-2(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the Committee Chair. The hearing may be in person or by telephone, as determined by the Committee Chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(6) If the Committee Chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings
September 16, 2014 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

R35. Administrative Services, Records Committee.
R35-6. Expedited Hearing.
R35-6-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(1) A party appealing a records classification to the Committee may request that a hearing be scheduled to hear the appeal prior to ten business days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(2) A written request shall include the reason(s) the request is being made.

(3) The Executive Secretary shall consult with the Committee Chair to decide whether an Expedited Hearing is warranted.

(4) The standard for granting an Expedited Hearing is "good cause shown." The Committee Chair shall take into account the reason for the request, and balance that against the burden to the Committee and the governmental entity.

R35-6-3. Scheduling the Expedited Hearing.

(1) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(2) After settling on a date no sooner than five days nor later than 14 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and governmental entity and schedule the hearing.

(3) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings
September 16, 2014 63G-2-502(2)
Notice of Continuation June 3, 2014

R65. Agriculture and Food, Marketing and Development.
R65-1. Utah Apple Marketing Order.
R65-1-1. Authority.

Promulgated under authority of Subsection 4-2-2(1)(e).

R65-1-2. Definitions of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Apples" means apples produced for market.

D. "Producer" means any person in this State in the business of producing or causing to be produced apples for the commercial market, provided such producers shall not include producers who sell all the commodity direct to the consumer.

E. "Handler" means any person engaged in the operation of selling, marketing, or distributing in commerce, or affecting commerce, apples which are produced in Utah; but no rule under this Order shall apply to the sale of such apples to Retail Outlets.

F. "Registered" producers means a producer who has indicated that he/she wants to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

G. "Known" producers means a producer of a specific commodity who has been identified by the commodity group, her/himself, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

R65-1-3. Board.

A. A Board of Control is hereby established consisting of seven members, two of whom shall be handlers to carry out the provisions of this order.

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Two grower members and one handler shall be appointed for a period of two years - the first appointment only. Three grower members and one handler member shall be appointed for a period of four years. All appointments after the first year shall be for a period of four years.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry.

D. No member of such Board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

E. The duties of the Board shall be administrative only and may include only the acts mentioned in this order.

F. A majority of the Board of Control must attend a meeting to conduct business. All decisions of the Board of Control shall be by majority vote.

G. The officers of the Board shall be selected from the seven Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office; it shall be filled by the Commissioner from a list of names submitted by the industry.

H. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-1-4. Provisions of the Order.

A. This order provides for:

1. Advertising and sales promotion to create and expand the market of Utah Apples. This shall be done without reference to brand or trade names.

2. Research projects and experiments for the purpose of improving the quality, size, health and general conditions of the apples grown in the State of Utah and for the purpose of protecting the health of the citizens of the State.

3. Uniform grading of apples sold or offered for sale by producers or handlers. Such grading standards shall not be established below any minimum standards now prescribed by law for this State.

4. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order which is to strengthen the apple businesses in the state.

B. Expenses - Assessments - Collection and Disbursement

1. Each producer or handler subject to this order shall pay to the Board of Control such producer's or handler's pro rata share of such expenses as the Commissioner may find will necessarily be incurred by the Board for the maintenance and functioning of said Board. Each producer shall pay up to 5 cents per 40 lb. box to the Board annually. The discretionary assessment shall be set by majority vote of the board, and approved by the Commissioner. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any handler or producer, subject to this Order, for the collection of such handler's or producer's pro rata share of expenses.

2. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

3. The Board of Control is required to reimburse the Commissioner for funds which are expended by the Commissioner in performing his duties, as provided in this Order, such reimbursement to include only funds actually expended in connection with this Order.

4. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to paragraph 5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

R65-1-5. Division of Funds.

Assessments made and monies collected under provisions of this Order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-1-6. Complaints for Violations - Procedure.

Complaints for violations shall be handled by the

responsible legal agencies and shall be enforced in the civil courts of the State.

R65-1-7. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request by December 31 for apples harvested in that harvest year.

R65-1-8. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every five years by the industry, Subsection 4-2-2(3)(a). Once a year, a referendum vote may be called at the request of the producers through a petition of ten percent of the producers.

KEY: promotions
1987 4-2-2(1)(e)
Notice of Continuation September 8, 2014

R65. Agriculture and Food, Marketing and Development.
R65-3. Utah Turkey Marketing Order.
R65-3-1. Authority.

A. Promulgated under authority of Section 4-2-2(1)(e).

B. The Commissioner of Agriculture and Food finds, after a study of information available and by request of the industry that it is in the public interest to establish a marketing order to improve conditions in the turkey producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum representing not less than two-thirds of the turkey production for the State of Utah during the calendar year. It is therefore ordered by the Commissioner, acting by the authority vested in him, that an Order be established to assure an effective and coordinated program to maintain and expand the Utah turkey industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-3-2. Definition of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Turkeys" means turkey eggs, turkey poults, breeder hens, and turkeys.

D. "Producer" means any person in this state in the business of producing or causing to be produced turkeys for market, provided producers shall not include producers who sell turkeys direct to the consumer which they themselves have produced.

E. "Handler" means any person engaged in the operation of selling, marketing, or distributing turkeys which are produced in Utah; but no rule under this Act shall apply to the sale of such turkeys to the ultimate consumer.

R65-3-3. Board.

A. A Board of Control is hereby established consisting of five members, two of whom shall be handlers, to carry out the provisions of this marketing order.

B. The original members of the Board of Control shall be selected by the Commissioner from names submitted by the industry.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry. One grower member and one handler member shall be appointed in February of 1981 for a period of three years. Two grower members and one handler member shall be appointed in February of 1981 for a term of four years.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more than eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office; it shall be filled through a board election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of Utah turkey production,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Turkey Marketing Board,

3. to conduct advertising programs to increase the consumption of Utah produced turkeys where and when possible, and

4. to conduct research projects to improve the profit potential of the Utah turkey industry.

5. Financial reports will be made available annually for the Board and members of the industry.

G. No member of such Board shall receive a salary, but each shall be entitled to actual expenses incurred while engaged in performing the duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

H. All decisions of the Board of Control shall be by a majority vote of those present.

I. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

J. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business.

R65-3-4. Provision of this Order.

A. This order provides for:

1. Uniform grading and inspection of turkeys sold or offered for sale by producers or handlers and for the establishment of grading turkeys in accordance with such grading standards so established. Such grading standards shall not be established below any minimum standards now prescribed by law for this state.

2. Advertising and sales promotion to create new or larger markets for turkeys grown in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to a particular brand or trade name. Provided further, that no advertising or sales promotion program shall be authorized which shall make use of false or unwarranted claims in behalf of the product covered by this Order, or disparage the quality, value, sale or use of any other agricultural commodity.

3. The labeling, marking, or branding of turkeys provided that such labeling, marking or branding, does not conflict with any rules of the Commissioner or laws of the State of Utah.

4. Conducting research projects and experiments for the purpose of improving the quality, size, and health and general condition of the turkey industry and for the purpose of protecting the health of the people of the State.

5. The Board of Control to cooperate with any other state or federal agency whose activities may be deemed beneficial to the purposes of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each handler subject to this Order shall pay to the Board of Control such handler's pro rata share (as approved by the Commissioner) of such expenses as the Commissioner may find will necessarily be incurred by the Board for the maintenance and functioning of said Board. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any handler, subject to this Order, for the collection of such handler's pro rata share of expenses.

a. Such handler's assessment shall be approved by the Commissioner and the industry.

b. This assessment shall be set at $.08 per hundred weight of processed bird.

2. The Board is authorized to incur such expenses as are

necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disperse all funds pursuant to R65-3-5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

3. The assessment of each producer shall be deducted from the producer's gross receipt by the dealer or producer-handler. All proceeds from the deducted portion shall be paid at least quarterly to the Board upon request of the Board.

4. The Board shall retain records of the receipt of the assessment which will be available for public inspection upon request.

5. The Board of Control is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

R65-3-5. Division of Funds.

Assessments made and monies collected under the provisions of this Order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year.

R65-3-6. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request at the end of each calendar year.

R65-3-7. Complaints of Violations.

Complaints of violation shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the State.

R65-3-8. Termination of Order.

The Commissioner may terminate this Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every 5 years by the industry, Subsection 4-2-2(3)(a). A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

KEY: promotions
1987 4-2-2(1)(e)
Notice of Continuation September 8, 2014

R65. Agriculture and Food, Marketing and Development.
R65-4. Utah Egg Marketing Order.
R65-4-1. Authority.

A. Promulgated under authority of Section 4-2-2(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds, after a study of information available and by request of the industry that it is in the public interest to establish a marketing order to improve conditions in the egg producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum representing not less than two-thirds of the egg production for the State of Utah during the calendar year. The production and marketing of egg products by numerous individual egg producers has prevented coordinated efforts in research and promotion necessary to maintain and expand markets. This process is vital to the well-being of the Utah egg industry which provides one of the basic, natural foods in the diet. It is therefore ordered by the Commissioner, acting by the authority vested in him, that an Order be established to assure an effective and coordinated program to maintain and expand the Utah egg industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-4-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Commercial Eggs" or "Eggs" means eggs from domesticated chickens which are sold for human consumption either in the shell egg form or for further processing into egg products.

D. "Producer" means a person owning at least 3,000 laying hens engaged in the business of producing or causing to be produced eggs for the commercial market, provided such producers shall not include producers who sell all the commodity to the consumer.

E. "Registered" producers means producers who have indicated that they want to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

F. "Known" producers means producers of a specific commodity who have been identified by the commodity group, themselves, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

G. "Case" means a standard shipping package containing 30 dozen eggs.

H. "Spent Hen" means hens which have been in production of commercial eggs and have been removed from such production.

I. "Handler" means an individual or an organization engaged in the merchandising of eggs or egg products.

R65-4-3. Board.

A. The Utah Egg Board is hereby established consisting of five members of the egg industry, plus ex-officio non-voting members from BYU and USU, and Utah Department of Agriculture and Food.

B. The original members of the Board shall be selected by the Commissioner from a list submitted by the industry.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the Commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more that eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah egg producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the egg marketing Board,

3. to conduct a public educational program to increase the consumption of Utah produced eggs where and when possible.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least quarterly.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. Financial report will be made available annually for the Board and members of the industry by the Utah Department of Agriculture and Food.

R65-4-4. Provisions of the Order.

A. This order provides for:

1. Uniform grading and inspection of eggs sold or offered for sale by producers or handlers and for the establishment of grading standards of quality, conditions, and size. Such grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for eggs produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of egg or egg products in conformity with the regulations of the Commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the quality, size, vitality, and general condition of the egg industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the Board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 30 cents per case to the Board annually. The discretionary assessment shall be set by majority vote of the board, and approved by the Commissioner. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in

commerce by such cooperative association of producers.

2. The assessment of each producer shall be deducted from the producer's gross receipt by the dealer or producer-handler. All proceeds from the deducted portion shall be paid at least quarterly to the Commission upon request of the Board.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

4. The Board of Control is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-4-5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year.

6. Any producer who wishes a refund of their paid assessment may request such by notifying the Board in writing within sixty days of payment of the assessment.

R65-4-5. Division of Funds.

Assessments made and monies collected under provisions of this order shall be divided into assessments and funds for:

A. administrative purposes,

B. educational purposes, advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-4-6. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-4-7. Complaints for Violations - Procedure.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-4-8. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-4-9. Quarterly Meeting.

The Board shall meet at least quarterly.

KEY: promotions

1987 **4-2-2(1)(e)**

Notice of Continuation September 8, 2014

R70. Agriculture and Food, Regulatory Services.
R70-440. Egg Products Inspection.
R70-440-1. Authority.

A. Promulgated under authority of Section 4-4-2.

B. Scope: This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

R70-440-2. Adopt by Reference.

Accordingly, the division adopts the egg products inspection standards and procedures as specified in Animal and Animal Products, 9 CFR Chapter III, Sub-Chapter I, Parts 590 and 592, January 1, 2004 edition, which is incorporated by reference within this rule.

KEY: food inspection
February 15, 2005 4-4-2
Notice of Continuation September 16, 2014

R70. Agriculture and Food, Regulatory Services.
R70-540. Food Establishment Registration.
R70-540-1. Authority.

Promulgated under authority of Subsection 4-5-9(1)(a).

R70-540-2. Purpose.

The purpose of this rule is to set forth requirements for the registration of food establishments to protect public health and ensure a safe food supply.

R70-540-3. Scope.

(1) This rule provides procedures to register grocery stores, warehouses, and food processors and any other establishment meeting the definition of a food establishment as per Section 4-5-2(9).

(2) This rule:

(a) establishes definitions;

(b) requires an owner or operator of a food establishment to annually register with the department;

(c) categorizes food establishments;

(d) requires an inspection to determine compliance with R70-530 prior to granting a registration for new food establishments;

(e) establishes the requirements for: issuance, denial, conditional denial, revocation, suspension, and reinstatement for food establishments.

R70-540-4. Definitions.

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

(a) "Department" means the Utah Department of Agriculture and Food, Division of Regulatory Services, or its representatives.

(b) "Farmer's Market" means a market where producers of food products sell only fresh, raw, whole, unprocessed, and unprepared food items directly to the final consumer.

(c) "Food processing" means blending, mixing, packaging, acidifying, curing, drying or dehydrating, dry packing, thermal processing, reduced-oxygen packaging, cooking, baking, heating, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, freezing, chilling, or otherwise manufacturing food products.

(d) "Food Processor" means an establishment that uses food processes indicated in R70-540-4(b). Examples include, but are not limited to, scratch bakery, dietary supplement manufacturer, candy factory, bottling plant, cannery, retail meat department, flour mill, ice plant, and low acid food processing establishment.

(e) "Inspection" means an on-site review of a food establishment conducted by the Utah Department of Agriculture and Food to ensure compliance with all applicable laws and rules.

(f) "Letter of Authorization" is a written document from the owner of an inspected food establishment that states that another entity, that is a separate business, is using their food establishment to process a food product. This letter of authorization is valid for one calendar year. This does not include employees of the food establishment or other businesses subcontracted by the food establishment that may temporarily use their facility for food processing activities.

(g) "Warehouse" means a business whose primary purpose is to store or hold food.

R70-540-5. Registration Categories.

(1) Each food establishment shall belong to only one of the four categories that have been established.

(2) A food establishment with multiple processing areas at the same physical address and under the same ownership will be evaluated and placed in a single category.

(3) A separate registration is required for each business owner operating under a letter of authorization.

(4) Grocery stores offering food as defined in Section 4-5-2(6) to consumers shall be categorized based on the following schedule:

TABLE I

	Inspectable Square Footage	Process Areas/Employees	Category
(a)	less than 1000	4 or fewer employees	small
(b)	1000-5000	limited food processing	medium
(c)	1000-50,000	2 or fewer food processing areas	large
(d)	greater than 50,000	more than 2 food processing areas	super

(5) Food or beverage manufacturing, processing, or packaging plants shall be categorized based on the following schedule:

TABLE II

	Inspectable Square Footage	Process Areas/Employees	Category
(a)	less than 1000	4 or fewer employees	small
(b)	1000-5000	limited food processing	medium
(c)	1000-20,000	2 or fewer food processing areas	large
(d)	greater than 20,000	more than 2 food processing areas	super

(6) Cold or dry storage warehouses or other types of food storage facilities shall be categorized based on the following schedule:

TABLE III

	Inspectable Square Footage	Category
(a)	Less than 1000	small
(b)	1000-5000	medium
(c)	1000-50,000	large
(d)	greater than 50,000	super

(7) A water vending machine owner or company shall be categorized as follows:

TABLE IV

	Number of Water Vending	Category
(a)	ten or fewer	small
(b)	eleven or more	medium

(c) as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d) when their primary purpose is to vend water.

(8) For mobile vendors, each vehicle or truck that sells prepackaged, potentially hazardous food items shall be categorized as a small.

(9) A temporary or seasonal business at an individual location shall be typed as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

(10) A farmer's market shall be exempt from the registration fee pursuant to Title 4-5(2)(9)(b).

(11) An establishment or operation calling itself a farmer's market, but which does not meet the definition of farmer's market in R70-540-4(b) shall be typed as one grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

R70-540-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year for the upcoming calendar and all registrations expire on December 31 of each year.

R70-540-7. Registration.

(1) Registration fees are established according to Section 4-5-9. When the appropriate fee is not paid on or before December 31, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31 will be required to register appropriately. New facilities registering after November 1 will be registered for the remainder of that year and the following calendar year. This does not apply to seasonal food establishments.

(2) Fees paid are nonrefundable.

(3) When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered food establishment.

R70-540-8. Requirements.

(1) The prerequisites for operation are as follows:

(a) a person may not operate a food establishment without a valid registration.

(b) a new registration is required within 60 days when ownership changes.

(c) registration is non-transferable.

(d) the Department may seek administrative or judicial remedies to achieve compliance with the laws and rules if a person fails to have a valid registration to operate a food establishment.

(2) The owner or person-in-charge shall have the registration available for review upon request.

(3) The owner of a food establishment may display the current annual registration.

(4) The applicant should submit an application for a registration at least 30 calendar days before the date planned for opening a new or remodeled food establishment.

(5) The person desiring to operate a food establishment shall submit to the department a written application for a registration on a form provided by the Department.

(6) The qualifications and responsibilities of applicants are as follows:

(a) be an owner or representative of the food establishment;

(b) comply with the requirements of the Utah Food Protection Rule R70-530 and other applicable laws;

(c) agree to allow access to the food establishment during normal business hours as specified under Subsection 4-5-9(5)(a), provide required information; and

(d) pay the applicable registration fees at the time the application is submitted.

(7) The contents of the application shall include:

(a) the name, billing address, business telephone number, and signature of the person applying for the registration;

(b) the name of the food establishment, federal tax identification number, physical location address, billing address, type of establishment (i.e. retail grocery, food processor, or warehouse), number and types of food processes, square footage of the food establishment, and the number of employees;

(c) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(d) a statement signed by the applicant that attests to the accuracy of the information provided in the application and agrees to provide other information as required by the Department.

R70-540-9. Issuance.

(1) New, converted, or remodeled food establishments are required to submit plans as specified in the Utah Food Protection Rule R70-530-10, 10-2; the department shall issue a registration to the applicant after:

(a) a properly completed registration form is submitted;

(b) the required plans, specifications, and information are reviewed and approved; and

(c) a preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with the Utah Food Protection Rule R70-530.

(2) Registration for an existing food establishment will be renewed annually as stated in Subsection 4-5-9(2).

(3) The Department shall issue a registration to a new owner of an existing food establishment after:

(a) a properly completed application is submitted, reviewed, and approved;

(b) an inspection shows that the establishment is in compliance with the Utah Food Protection Rule R70-530 and;

(c) the appropriate fees are paid.

R70-540-10. Conditional Denial of Registration.

(1) If the registration is conditionally denied, the Department shall provide the applicant with a written notification within five business days that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

(2) Upon receipt of the notice of conditional denial, the applicant may:

(a) correct deficiencies and submit a description of the corrective actions; or

(b) submit written information to rebut the deficiencies described in the notice; or

(c) request an informal hearing, no later than ten business days after receipt of the notice.

(3) After receiving a written notification from the applicant stating that the deficiencies cited in the notice of conditional denial no longer exist, the Department shall:

(a) evaluate the applicant's corrective actions and supporting documentation or the written rebuttal;

(b) conduct an on-site re-inspection, if necessary, within three business days after receipt of written notification or correction;

(c) issue the registration when the corrective action or rebuttal is sufficient;

(d) deny the registration when the corrective action or rebuttal is not sufficient; or

(e) issue a written notice of denial to an applicant who fails to respond to the notice of conditional denial.

R70-540-11. Denial of Registration.

(1) If the registration is denied, the Department shall provide the applicant with a written notification that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

R70-540-12. Suspension of Registration.

(1) The Commissioner may suspend a registration:

(a) whenever an inspection of the food establishment reveals that the establishment has critical or repeat violations that remain uncorrected beyond the negotiated period of time.

(b) when there exists in a food establishment an immediate and substantial hazard to public health, unless the hazard is immediately corrected. The Commissioner may temporarily suspend the registration of the food establishment without prior notice, informal hearing, and order the food establishment immediately closed by issuing an order in writing. An immediate and substantial hazard to the public health means any condition, based upon inspection findings or other evidence that:

(i) there is an imminent threat of food-borne illness or

disease transmission; or

(ii) there is a hazardous condition including but not limited to critical control points without adequate control measures, contamination from wastewater, or non-potable water supply.

(c) in the event of a natural disaster, the Commissioner has the authority to order an establishment immediately closed if, in the opinion of the Commissioner the establishment cannot operate in a safe and sanitary manner. Conditions for immediate closure can include but are not limited to the following: No water supply, no electric power, flooding, or significant damage to the establishment. The Commissioner shall decide under what conditions the establishment will be allowed to reopen.

(d) whenever an owner or operator of a food establishment denies access to authorized personnel during normal business hours and does not allow them to conduct regulatory activities.

(2) The procedures for suspending the registration are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be suspended;

(i) the Commissioner shall state specific reasons for which the registration is to be suspended; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is suspended for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder no later than ten business days, after receipt of the notice;

(b) the establishment shall be closed and shall remain closed until the registration has been reinstated;

(c) a person whose registration has been suspended may request a re-inspection. Upon receipt of the request, the Department will conduct the inspection within three business days. The registration may be reinstated if the inspection shows the violation(s) that led to the suspension is corrected;

(3) the Department may suspend the operations for one processing area of an establishment without suspending the registration for the entire food establishment if the reason for suspension is isolated to that processing area and does not affect other areas of the establishment.

(4) if a food establishment voluntarily closes due to an immediate and substantial hazard to public health, the food establishment shall notify the Department prior to reopening.

(5) when a third administrative enforcement action is assessed against a registered establishment within any twelve-month period of time, the Department may initiate proceedings to suspend the registration.

(6) the registration shall be suspended and in effect until the conditions no longer exist or the Commissioner affirms, modifies, or rescinds the order as appropriate.

R70-540-13. Revocation.

(1) The Commissioner may revoke a registration whenever:

(a) the Commissioner is unable to conduct inspections in accordance with this chapter due to circumstances within the control of the registration holder or person-in-charge; or

(b) the registration has been suspended more than three times within a twelve-month period.

(2) The procedures for revocation are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be revoked;

(i) the Commissioner shall state specific reasons for which the registration is to be revoked; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is revoked for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder, not later than ten business days after receipt of the notice.

(b) a person whose registration has been revoked may reapply thirty days after the date of revocation. Application fees for a new registration will apply.

R70-540-14. Exemptions.

For the purpose of granting registration fee exemptions the following applies:

(1) Food establishments that distribute food provisions directly to consumers without monetary consideration exchange will be exempt from food registration fees.

(a) These facilities may not conduct any type of food processing or reconditioning.

(b) Inspections will be conducted by UDAF to ensure food safety and the food establishments will be required to register annually with UDAF.

(2) Warehouses whose sole purpose is to distribute directly to food establishments that distribute food provisions directly to consumers without monetary consideration exchange may be exempt from registration fees.

KEY: food inspection

December 14, 2007	**4-5-2(5)**
Notice of Continuation September 16, 2014	**4-5-2(9)(b)(ii)**
	4-5-9(1)(a)

R70. Agriculture and Food, Regulatory Services.
R70-960. Weights and Measures Fee Registration.
R70-960-1. Authority.

Promulgated under authority of Section 4-9-15.

R70-960-2. Definitions of Terms.

A. Fuel dispenser means a liquid measuring device used in a multiple product dispenser (MPD) and other fuel dispensing applications. These devices are counted as individual grades per side, per hose of dispenser, including diesel.

B. Meter means a vehicle tank meter, rack meter, LPG meter, any measuring device that is mounted on a vehicle, devices mounted as a rack meter at a fuel bulk plant or refinery, and any meter that dispenses LPG at a retail establishment. Each individual meter is counted as a device.

C. Load receiving element means that element of a scale that is designed to receive the load to be weighed, for example: platform, deck, rail, hopper, platter, plate, or scoop.

D. Small scale means any load receiving element of a weighing device capable of measuring weight between 0 pounds to 999 pounds.

E. Large scale means any load receiving element of a weighing device capable of measuring weight from 1000 pounds and up.

F. Check-out register means any device that is commercially used in a price verification system at a check-out register. Included are those devices that use Universal Product Code (U.P.C.) scanners, Electronic Product Code (E. P. C.) readers, manual entries, or any current or future use of any device that could be used at the final point of sale as a means for pricing for commercial sales.

R70-960-3. Application.

This rule shall apply to commercially-used weighing or measuring instruments or devices at the final point of sale. This will include the following: fuel dispensers, meter, small scale, large scale, and check-out register.

R70-960-4. Device Registration.

A. Weighing or measuring devices used for commercial purposes in the State of Utah shall be registered annually.

B. Each separate physical location of a business establishment must register the devices at that location.

C. The Department of Agriculture and Food may seek administrative or judicial remedies to achieve compliance with the laws and rules of Weights and Measures Fee Registration.

D. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

R70-960-5. Device.

The Department of Agriculture and Food may permit the registration to be applicable to a replacement for an original device or any additional devices within the annual registration period.

R70-960-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year. All registrations expire on December 31 of each year. Fees paid are nonrefundable.

R70-960-7. Registration Certificate Displayed.

Any owner or user of commercially used weighing and measuring devices may display the current annual registration for those instruments and devices or produce the certification for review upon request.

R70-960-8. Registration.

A. Registration fees are established according with Section 4-9-15(1)(h)(i). When the appropriate fee is not paid on or before January 1, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31, will be required to register appropriately. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

B. When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered weights and measures establishment.

KEY: inspections
November 2, 2004 4-9-15
Notice of Continuation September 8, 2014

R277. Education, Administration.
R277-471. Oversight of School Inspections.
R277-471-1. Definitions.

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

B. "Certified plans' examiner" means a professional who has current certification through the International Code Council which requires a rigorous testing program.

C. "Charter schools" means:

(1) schools acknowledged and operating as charter schools by local boards of education under Section 53A-1a-505 or by the Board under Section 53A-1a-515; and

(2) charter school applicants that have their applications approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, the Utah Charter Schools Act.

D. "Charter school responsible person or local charter school board building officer (charter school designee)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with the Code on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53A-20-104, 53A-20-105, 10-9a-305, 17-27a-305, and 58-56, Uniform Building Standards Act, as well as the provisions of this rule. The form available on the USOE School Finance and Statistics Section Web page: http://www.schools.utah.gov/finance/facilities/default.htm.

F. "Code" means the state-adopted construction code, including all statutes and administrative rules which control the construction, renovation, and inspection of Utah public school buildings.

G. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(11).

H. "Public School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with the Code.

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

J. "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district or charter school shall follow when constructing a new public school building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction under Section 53A-20-104.5, and is available on the USOE School Finance and Statistics Section Web page: http://www.schools.utah.gov/finance/facilities/default.htm.

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

R277-471-2. 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 permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify local school board and charter school board responsibilities and accountability to the Board.

R277-471-3. School District Building Official, and Charter School Responsible Person.

A. Local boards of education and local charter school boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code.

(1) Local school boards shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code. Each local charter school board shall appoint a local charter school board building officer who has direct operational responsibility for construction, renovation, and inspection of the charter school. The local charter school board building officer shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

(c) Following notification, the USOE shall provide a construction project number.

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of the Code.

C. The local charter school board building officer shall monitor all charter school building construction to ensure compliance with the provisions of the Code.

D. The SDBO and local charter school board building officer shall render interpretations of the Code for the school district or charter school. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.

E. The SDBO and local charter school board building officer may adopt and enforce supplemental school district and charter school policies under appropriate school district and charter school policies to clarify the application of the provisions of the Code for school district and charter school personnel.

F. Before any school district or charter school construction project begins, school districts and charter schools shall obtain a construction project number from the USOE and complete and submit construction project identification forms provided by the USOE for all projects which exceed $99,999 in cost.

G. All school district and charter school plans and specifications shall be approved by a certified plans' examiner before any school district or charter school construction project begins.

H. If a school district or charter school is unable to provide appropriate and proper school construction inspection services, the Superintendent may provide for inspection services from a list of inspectors determined by the Superintendent and charge the school district or charter school for those services. Fees shall be established in advance of inspection services.

I. For all school district or charter school projects that exceed $99,999, the SDBO and local charter school board building officers shall:

(a) submit inspection summary reports monthly to the USOE;

(b) submit inspection summary reports monthly to the appropriate local government entity building official;

(c) submit inspection certificates to the USOE and appropriate local government entity building official;

(d) maintain all submitted documentation at a designated

school district/charter school location for auditing or monitoring;

(e) identify and provide to the USOE and local government entity building official the total number of inspections with the name, state license number, and disciplines of each inspector;

(f) ensure that each inspector is adequately and appropriately credentialed;

(g) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with the law and this rule.

(h) send the final inspection certification and inspection verification to the USOE and to the appropriate local government entity building official upon completion of the project;

J. Reports required under this rule may be paper or electronic.

R277-471-4. Coordination with Local Governments, Utility Providers and State Fire Marshal.

A. Prior to developing plans and specifications for a new public school, or the expansion of an existing public school, school districts and charter schools shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future roadways;

(4) maximize school, student and site safety.

B. Prior to developing plans and specifications for a new public school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments and the State Fire Marshal.

C. School districts and charter schools shall maintain documentation for audit purposes of coordination, meetings, and agreements.

R277-471-5. Charter School Land Use Zoning within Municipalities and Counties.

A. If consistent with the general plan, a charter school shall be considered a permitted use in all zoning districts within a municipality or county, except as provided in R277-471-5D.

B. Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis by municipalities and counties.

C. Parking requirements for a charter school may not exceed the minimum parking requirements for traditional public schools of like size and grade levels or other institutional public uses throughout the municipality or county.

D. If a municipality or county has designated zones for sexually oriented businesses, or businesses which sell alcohol, a charter school may be prohibited from locations which would defeat the purpose for the zone, unless the charter school provides a waiver of liability for the local government entity by the charter school governing board in an open meeting.

R277-471-6. Public School District/Charter School Construction Inspection.

A. A public school district or charter school may employ one of three methods for school construction inspection:

(1) An independent, properly licensed and certified building inspector;

(2) a properly licensed and certified building inspector, employed by the school district; or

(3) a properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.

B. Procedure for independent properly licensed and certified building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds $99,999 in cost.

(2) The school district, through the SDBO, or charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) The independent building inspector shall:

(a) not be an employee of the architect, contractor or any subcontractor on the project;

(b) be approved by the applicable local government or school district building inspector; and

(c) be properly licensed and certified to perform all of the inspections that the inspector is required to perform.

(4) After completion of the project, the SDBO or charter school designee shall, upon completion of all required inspections of the school building, file with the USOE and the building inspector of the local jurisdiction in which the building is located, a certificate of inspection verification, certifying that all inspections were completed in accordance with the Code.

(5) The school district or charter school shall seek a certificate authorizing permanent occupancy of the school building from the Superintendent.

(6) Within 30 days after the school district or charter school files a request for the issuance of a certificate authorizing permanent occupancy of the school building, the Superintendent shall:

(a) issue to the school district or charter school a certificate authorizing permanent occupancy of the school building; or

(b) deliver to the local school board or charter school board a written notice indicating deficiencies in the school district's or charter school's compliance with the inspection findings; and

(c) mail a copy of the certificate authorizing permanent occupancy or the notice of deficiency to the building official of the local government entity in which the school building is located.

(7) Upon the local school or charter school board's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the school district or charter school shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the school district or charter school has complied with all applicable fire and life safety code requirements.

(8) Upon the school district or charter school remedying any inspection deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building and mail a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

(9) The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection

services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the public school building.

(10) The Superintendent may charge the school district or charter school a fee not to exceed the actual cost of performing the inspection(s) for inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the school building.

(11) A certificate authorizing permanent occupancy issued by the Superintendent shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.

C. Procedures for properly licensed and certified school district building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds $99,999 in cost.

(2) The school district, through the SDBO, or the charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.

(4) Charter schools:

(a) After completion of the project, the charter school may seek a certificate of occupancy from the SDBO of the school district providing the inspection services.

(b) If the charter school seeks a certificate of occupancy from the SDBO, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the municipality or county in which the building is located.

(c) A certificate authorizing permanent occupancy issued by a SDBO with authority to issue the certificate shall satisfy any municipal or county requirement for an inspection or a certification of occupancy.

D. Procedure for properly licensed and certified local municipal or county building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the public school building to the Superintendent for each project that exceeds $99,999 in cost.

(2) The school district, through the SDBO or charter school designee, shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A public school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(4) Charter schools:

(a) After completion of the project, the charter school designee shall obtain a completed certificate of inspection verification form from the local municipal or county building inspector certifying that all inspections were completed in accordance with the Code and file the form with the USOE.

(b) A charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

E. A municipality or county may not:

(1) require school districts or charter schools to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school property. All temporary classroom facilities shall be properly inspected to meet the Code.

(2) require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;

(3) require a school district or charter school to pay fees not authorized under 10-9a-305 or 17-27a-305;

(4) require inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;

(5) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the school project upon the need that the improvement is to address; or

(6) impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students.

F. A municipality or county may, at its discretion, schedule a time with school district or charter school officials to:

(1) provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and

(2) provide recommendations based on the walk-through.

R277-471-7. School Building Construction and Inspection Resource Manual.

A. The USOE shall develop and distribute to each school district and charter school a Resource Manual.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board, local school boards, charter school boards, as well as school district and charter school personnel shall act consistent with the Resource Manual.

R277-471-8. Annual Construction and Inspection Conference.

A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district, charter school, and interested persons involved in the school

building construction industry. The conference shall:

(1) provide current information on the design, construction, and inspection process of school buildings;

(2) provide training on school site selection, design, construction, lowest life-cycle costing, and construction inspection matters as determined by the USOE; and

(3) offer and discuss information to improve the existing public school building construction inspection program.

R277-471-9. Enforcement.

A. School districts and charter schools which fail to comply with the provisions of this rule are subject to interruption of state aid dollars by the Board in accordance with Section 53A-1-401(3) and 53A-17a-144(4)(d).

(1) If a school district or charter school fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the school district superintendent or local charter school director shall receive notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE shall interrupt the Minimum School Program fund transfer process to the following extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupted the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. A nonrefundable fine in the amount of one half of one percent of the total construction costs shall be assessed school districts and charter schools that fail to report new or remodeling projects to USOE that exceed $99,999 before construction begins.

(1) Nonrefundable fine amounts shall be deducted from the respective school district's and charter school's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) School district nonrefundable fine amounts collected by USOE shall be deposited into the School Building Revolving Account; and

(b) charter school nonrefundable fine amounts collected by USOE shall be deposited into the Charter School Building Subaccount within the School Building Revolving Account.

D. Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.

R277-471-10. Appeals Procedure for Nonrefundable Fines.

A. School districts or local charter school boards may appeal a fine assessed under R277-471-9C consistent with the following:

(1) A fine may not be appealed until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) The appeal must be filed within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) The appeal shall be delivered or provided electronically to the USOE as provided by the appeal form.

(5) The appeal form shall require an explanation of unanticipated or compelling circumstances that resulted in local board's or charter school's failure to report new construction or remodeling projects that exceed $99,999.

(6) The appeal form shall require a notarized statement from the district superintendent or local charter board chair that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the local school board/local charter board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or school district/charter school business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

B. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

C. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further appeal opportunity.

KEY: educational facilities

July 8, 2008	**Art X Sec 3**
Notice of Continuation September 9, 2014	**53A-1-401(3)**
	53A-20-104
	53A-20-104.5
	10-9a-305
	17-27-105
	53A-17a-144(4)(d)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

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

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

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

F. "ESEA subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA).

G. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

K. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language hearing Association (ASHA) certification.

L. "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the professional educator license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval and Requirements.

A. The Board shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

(1) be accredited by NCATE or TEAC; or

(2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and

(3) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(4) include coursework designed to ensure that the educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(5) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(6) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; requirements shall include the following minimum components, beginning August 1, 2014:

(a) a minimum high school/college GPA of 3.0; and

(b) a USOE-cleared fingerprint background check; and

(c) a passing score on a Board-approved basic skills test; or

(d) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(7) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. An institution may waive any of the entrance requirements provided in R277-502-3C(6) based on program established guidelines for no more than 10 percent of an entrance cohort.

E. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

(1) observing and monitoring the accreditation process;

(2) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;

(3) reviewing program procedures to ensure that Board requirements for licensure are followed;

(4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

F. After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

(1) program summary;

(2) accreditation findings;

(3) program areas of distinction;

(4) program enrollment;

(5) program goals and direction.

G. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE and program approval is revoked by the Board under R277-502-3O.

H. New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

(1) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;

(4) information about program timelines and anticipated enrollment.

I. Applications for new educator preparation programs shall be approved by the Board.

J. Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

(1) shall be reviewed and approved by USOE;

(2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

K. An educator preparation program seeking accreditation may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the accreditation process.

L. A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of each year. The report shall summarize the institution's annual accreditation report and shall include the following:

(1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(2) information explaining any significant changes to course requirements or course content;

(3) the program's response to USOE-identified areas of concern or areas of focus;

(4) information regarding any program-determined areas of concern or areas of focus and the program's planned response;

(5) a summary explanation of students admitted under the waiver identified in R277-502-3D and an explanation of the waiver.

M. The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

N. Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

O. Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

P. An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

Q. If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. Level 1 License Requirements

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the

preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

B. Level 2 License Requirements

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(3) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

C. Level 3 License Requirements

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. License Renewal Timeline

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, and issued before 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative/Supervisory (K-12);
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. Exceptions to the three Letters of Authorization limitation may be granted by the State Superintendent of Public Instruction or his designee on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) Following the expiration of the Letter of Authorization, the educator who is still not completely approved for licensing shall be considered under-qualified.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the

principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Professional Educator License Fees.

A. The Board shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive.

E. Differentiated fees may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

KEY: professional competency, educator licensing
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53A-1-401(3)

R277. Education, Administration.
R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) Licensure.
R277-504-1. Definitions.

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

B. "Communication Disorders license area of concentration" means the areas of content required for providing services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.

C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal programs below kindergarten level.

D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons must meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. Establishment of this standard was a collaborative initiative between the Department of Health and the State Office of Education. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, a person must have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.

E. "Elementary (1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.

H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

I. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate agreement, to candidates who have also met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

M. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary Certificates carry endorsements for the areas in which the holder is qualified.

N. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which permits the holder to teach students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which permits the holder to teach students with severe learning and behavior problems;

(3) Hearing Impaired Endorsement which permits the holder to teach students who are deaf or other hearing impaired;

(4) Visually Impaired Endorsement which permits the holder to teach students who are blind or other visually impaired.

O. Speech-Language Pathologist (SLP) license" means a speech-language pathologist area of concentration required for teaching students with communication disorders, birth through age 21. A speech-language pathologist license carries a Speech-Language Pathologist endorsement.

P. "Speech-language technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.

Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R. "USOE" means Utah State Office of Education.

R277-504-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, 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:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which must be met for each of these areas by a teacher preparation institution in order to receive Board approval of its program for teachers.

R277-504-3. Level 1 License.

A. The Level 1 license is issued for three years.

B. During the Level 1 provisional period, the employing school district shall supervise the candidate closely and make special assistance available.

C. An applicant for the Level 1 Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist, Speech-Language Technician, and Preschool Special Education (Birth-Age 5) license area of concentration shall have done all of the following:

(1) graduated with a bachelor's degree, or in the case of Communication Disorders and Speech-Language Pathologist applicants, a masters degree or equivalent, from a nationally or regionally accredited institution consistent with R277-503;

(2) completed a Board-approved program for the preparation of Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Preschool Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) specialists;

(3) been recommended by an institution whose program of preparation is Board-approved and accredited consistent with

R277-503.

D. If a teacher has taught for three years in Utah, a Level 1 license can only be renewed consistent with the following:

(1) the employing LEA has requested a one year extension consistent with Entry Years Enhancement (EYE); or

(2) an individual has continuous experience as a SLP in a clinical setting.

E. The Level 1 Secondary License

(1) A Level 1 secondary license with subject endorsement(s) is valid in grades six through twelve.

(2) The 6-12 license requires a major or major equivalent, but the teacher cannot teach in a self-contained class.

(3) An applicant for the Level 1 Secondary license shall have completed an approved teaching major consistent with subjects taught in Utah secondary schools. The license is endorsed for all subjects in which the applicant has at least a minor or has completed equivalent training.

(a) A teaching major requires not fewer than 30 semester hours (45 quarter hours) of credit in one subject.

(b) A teaching minor requires not fewer than 16 semester hours (24 quarter hours) of credit in one subject.

F. A Preschool Special Education (Birth-Age 5) Level 1 License:

(1) Applicants for the Preschool Special Education (Birth-Age 5) license shall have completed a Board-approved program, consistent with R277-503, for teaching infants, toddlers, and preschool-age children with disabilities.

(2) Hearing Impaired/Vision Impaired (HI/VI) Endorsements required under this rule shall be issued to meet "the highest requirements in the State applicable to a specific profession or discipline" required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.

(a) Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (birth-age 5) or vision impaired (birth-age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Hearing Impaired (Birth-Age 5) or Vision Impaired (Birth-Age 5) or both.

(b) All professional personnel teaching children with HI/VI in self-contained, categorical settings shall meet the standards in R277-504-3I(1).

(c) Teachers who hold an equivalent license from a state other than Utah shall be required to meet the standards referred to in R277-504-3I(2)(d) upon receipt of an initial Utah license.

(d) All professional personnel teaching preschool-aged children who are HI/VI in self-contained, categorical classrooms as of January 1998, shall be required to complete a Board-approved training program, consistent with R277-503, making them eligible for the Birth-Age 5 HI/VI endorsements under this rule.

(e) This training shall be developed based on an analysis of presently-held licenses and endorsements, teaching experiences, and training activities as compared to the requirements of the new standards.

G. Applicants for Special Education (K-12) licenses shall have completed a Board-approved program for teaching students with mild/moderate, severe, hearing, or visual impairments. The Special Education license (K-12) is endorsed for any area in which the program has been completed. Educators who hold Special Education licenses may also be issued endorsements.

H. Applicants for Communication Disorders license areas of concentration (audiologist) shall have completed a Board-approved program for teaching pupils with communication disorders which includes the master's degree or 30 semester hours earned after meeting requirements for a bachelor's degree.

I. Speech-Language Pathologist (SLP) License Area of Concentration

(1) Qualifications: To qualify for the SLP area of concentration, an individual shall have completed a Board-approved program for teaching students with speech/language impairments. Such programs include:

(a) a master's degree and Certificate of Clinical Competence (CCC); or

(b) a master's degree; or

(c) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.

(2) An individual who has completed a Board-approved bachelor's degree program in communication disorders at an accredited higher education institution, and acquired the competencies necessary for assignment as a graduate student intern, as determined by the higher education institution, may receive a one-year letter of authorization from the USOE.

(a) This letter of authorization shall be issued under R277-504-3I(2)(d), and may be renewed annually for up to three years if:

(i) the applicant has been admitted to an accredited graduate program at the time the license is issued; and

(ii) the applicant files with the USOE evidence of completion of at least nine quarter hours (six semester hours) of credit applicable to the acquisition of a master's degree or the equivalent in communication disorders each year that the license is to remain in effect.

(b) A graduate student intern shall have been recommended by a higher education institution whose program of preparation is Board-approved. The graduate student intern shall be appropriately supervised by a speech-language pathologist.

(3) An individual with a letter of authorization may perform fully licensed speech-language functions, as directed, solely within the confines of the public school.

(4) This area of concentration does not qualify the individual to provide services outside of the educational setting.

J. Speech-Language Technician (SLT) License Area of Concentration

(1) To qualify for the SLT area of concentration, an individual shall have completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE. Additional professional development shall be completed prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.

(2) A speech-language technician shall work under the supervision of a speech-language pathologist who accepts full responsibility for the work of the speech-language technician.

(3) The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.

(4) An individual may perform speech-language technician functions and duties solely within the confines of the public school.

(5) This area of concentration does not qualify the individual to provide services outside of the educational setting.

(6) The speech-language technician's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.

(7) The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.

(8) Documented clinical employment may be substituted at a school district's discretion for employment in education.

R277-504-4. Level 2 License.

A Level 2 license is issued after:

(1) a candidate completes three years of successful professional teaching;

(2) a candidate completes all other Entry Years Enhancements (EYE) requirements consistent with R277-522;

and

(3) the employing public school district or accredited private school recommends the candidate to receive the Level 2 license, based on information from peers and supervisors.

R277-504-5. Special Validations.

A. An individual holding a Level 2 Elementary license and for whom the employing district has requested a letter of authorization assigning the individual to a kindergarten position may qualify for an Early Childhood license by completing an approved program of early childhood education at an accredited institution of higher education or the Alternative Routes to Licensure Program (ARL). The program may also include district professional development. Practicum experiences should be in the regularly assigned kindergarten classroom of the applicant for the license.

B. An Elementary teacher may be licensed in grades K-3, K-6, or 1-8.

(1) The 1-8 license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

(2) A teacher shall be endorsed in a subject by the USOE to teach assigned subjects at the 7-8 grade level.

(3) The Middle Level license (5-9) continues to be valid; however, a middle level license (5-9) has not been issued since April 1, 1989 and is no longer required of teachers or issued to teachers assigned to the middle school.

R277-504-6. General Standards for Approval of Programs for the Preparation of Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education Teachers.

A. The teacher preparation program of an institution may be approved by the Board if it:

(1) meets the standards prescribed in the NCATE Professional Speciality Association or 90 percent of the completers pass the Board-approved content assessments; and

(2) requires the study of:

(a) state laws and policies which specify content, values, and other expectations of teachers and other professionals in the school system;

(b) techniques for evaluating student progress, including the use and interpretation of both standardized and teacher-made tests; and

(c) knowledge and skills designed to meet the needs of students with disabilities in the regular classroom. These shall include the following domains:

(i) knowledge of disabilities;

(ii) knowledge of the role of nonspecial education teachers in the education of students with disabilities;

(iii) skills in assessing the educational needs and progress of students with disabilities in the regular education classroom;

(iv) skills in the implementation of an educational program for students with disabilities in the regular classroom; and

(v) skills in monitoring student progress.

B. The standard requiring the application of methods and techniques in a clinical setting is met by student teaching carried out under the direction of the institution. The following may be accepted as totally or partially fulfilling this requirement:

(1) two years of full-time contract teaching experience in a regular classroom situation in kindergarten through grade twelve in a public or accredited private or parochial school may totally fulfill the requirement;

(2) teaching in an alternative school or similar school may be accepted for up to one-half of the student teaching requirement;

(3) teaching in a community college, trade-technical college, or other post-secondary teaching experiences may be accepted for up to one-half of the student teaching requirement;

(4) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;

(5) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

(6) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

R277-504-7. Standards for Approval of Programs for Early Childhood and Elementary Teachers.

The standards shall be applied to the specific age group or grade level for which the program of preparation is designed. The teacher preparation program of an institution may be approved by the Board if it:

A. meets the standards prescribed in the NCATE Professional Speciality Association, including a student teaching experience; and

B. requires study and experiences needed in disciplines which provide content knowledge needed to teach:

(1) language development and listening, speaking, writing, and reading, with emphasis on language development;

(2) mathematics;

(3) biological and physical science and health;

(4) social studies; and

(5) fine arts.

R277-504-8. Standards for Approval of Program for Preparing Teachers in Major and Minor Fields.

The teacher preparation program of an institution may be approved by the Board if it meets the general and specific standards prescribed in the NCATE Professional Speciality Association, including a student teaching experience.

R277-504-9. Standards for Approval of Programs for Special Education (K-12) and Preschool Special Education (Birth-Age 5) Teachers.

The teacher preparation program of an institution may be approved by the Board if it meets the following standards:

A. Mild/Moderate Endorsement: The teacher preparation program of an institution for mild/moderate endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Speciality Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

B. Severe Disabilities Endorsement: The teacher preparation program of a higher education institution for severe disabilities endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Specialty Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

C. Hearing Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association or if 90 percent of the program completers passes the Board-approved content tests for hearing impaired specialists.

D. Visually Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for visually impaired specialists.

R277-504-10. Standards for Approval of Programs for Communication Disorders and Speech-Language Pathologist Licenses.

A. Speech Pathology Area of Concentration: The

preparation program for Speech-Language Pathologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association.

B. Audiology Endorsement: The preparation program for audiologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association.

KEY: teacher , professional education, accreditation
July 8, 2008 Art X Sec 3
Notice of Continuation September 2, 2014 53A-1-402(1)(a)
53A-1-401(3)

R277. Education, Administration.
R277-607. Truancy Prevention.
R277-607-1. Definitions.

A. "Absence" means a student's non-attendance at school for one school day or part of one school day.

B. "Habitual truant" means a school-age minor who:

(1) is at least 12 years old;

(2) is subject to the requirements of Section 53A-11-101.5; and

(3)(a) is truant at least ten times during one school year; and

(b) fails to cooperate with efforts on the part of school authorities to resolve the minor's attendance problem as required under Section 53A-11-103.

C. "Habitual truant citation" is a citation issued only consistent with Section 53A-11-101.7.

D. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).

E. "Truant" means absent without a valid excuse.

F. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the school or district policy.

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

H. "Valid excuse" means an excuse for an absence from school consistent with Section 53A-11-101(9) and may include:

(1) illness;

(2) family death;

(3) approved school activity;

(4) excuse consistent with student's IEP, Section 504 accommodation plan, or a school/school district valid excuse definition.

R277-607-2. 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 Sections 53A-11-101 through 53A-11-106 which direct educational entities and parents working on behalf of children to encourage compliance with the compulsory education law, school attendance for all students, and cooperation in these important efforts.

B. The purpose of this rule is to direct schools/school districts and charter schools to establish procedures for:

(1) informing parents about compulsory education laws;

(2) encouraging and monitoring school attendance consistent with the law; and

(3) providing firm consequences for noncompliance.

C. This rule encourages meaningful incentives for parental responsibility and directs school districts and charter schools to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

A. Each local school board and charter school board shall develop a truancy policy that encourages regular, punctual attendance of students, consistent with this rule and 53A-11-101 through 53A-11-105 and shall review the policy annually.

B. Local school boards and charter school boards shall annually review attendance data and consider revisions to policies to encourage student attendance.

C. The local school board and charter school board truancy policy shall be available for review by parents or interested parties.

D. Habitual truant citations may be issued to students consistent with Section 53A-11-101.7.

R277-607-4. School/School District and Charter School Responsibilities.

A. School districts and charter schools shall:

(1) establish definitions not provided in law or this rule necessary to implement a compulsory attendance policy;

(2) include definitions of approved school activity under Section 53A-11-101(9)(c) and excused absence to be provided locally under Section 53A-11-101(9)(e);

(3) include criteria and procedures for preapproval of extended absences consistent with Section 53A-11-101.3; and

(4) establish programs and meaningful incentives which promote regular, punctual student attendance.

B. School districts and charter schools shall include in their policies provisions for:

(1) notice to parents of the policy;

(2) notice to parents as discipline or consequences progress; and

(3) opportunity to appeal disciplinary measures.

C. School districts and charter schools shall establish and publish procedures by which school-age minors or their parents may contest notices of truancy.

R277-607-5. Parent Responsibilities.

Parents of school-age minors shall cooperate with school boards and charter school boards to secure regular attendance at school by school-age minors for whom they are responsible.

KEY: compulsory education, truancy
October 10, 2007 Art X Sec 3
Notice of Continuation September 2, 2014 53A-1-401(3)
53A-11-101 through 53A-11-105

R277. Education, Administration.
R277-706. Public Education Regional Service Centers.
R277-706-1. Definitions.

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

B. "Eligible regional service center" means a regional service center formed by two or more school districts by means of an interlocal entity in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.

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

R277-706-2. 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-3-429(6) that directs the Board to make rules regarding eligible regional services center, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and procedures for school districts to form interlocal agreements and to provide for distribution of legislative funds to eligible regional service centers by the Board.

R277-706-3. Eligible Regional Service Centers.

A. Two or more school districts may enter into an interlocal agreement and form an interlocal entity.

B. An eligible regional service center may receive funds if the Legislature appropriates money.

C. An interlocal agreement entered into shall confirm and ratify the regional service center as of the effective date of the interlocal agreement.

R277-706-4. Distribution of Funds.

A. The USOE shall distribute funds, if provided by the Legislature, in equal amounts to eligible regional service centers based on:

(1) requests from eligible regional service centers; and

(2) satisfaction and submission of all information and requirements set by the Board.

B. The USOE shall provide notice that completed applications for regional service center funds are due to the USOE consistent with timelines provided by the USOE.

C. The Board may review and consider a different distribution plan for future years.

D. Legislative funding, if provided, shall be distributed to eligible regional service centers after July 1 of each year.

R277-706-5. Eligible Regional Service Center Responsibilities.

A. Eligible regional service centers shall submit an annual application for available funds to the Board consistent with USOE timelines.

B. A regional service center application for funds shall include:

(1) a copy of completed interlocal agreement(s);

(2) a proposed budget and request for funds from the Board;

(3) a current external audit of current regional service center assets and liabilities in the initial application for funds and with each annual application;

(4) assurance signed by all parties to the interlocal agreement that the USOE shall have access to all regional service center records upon request;

(5) an annual financial report from the previous fiscal year;

(6) a plan for the use and distribution of regional service center funds for the applicable fiscal year with specific attention to delivery of Utah Education Network services and the delivery of education-related services; and

(7) an annual performance report beginning with fiscal year 2012 including information about:

(1) the regional service center delivery of Utah Education Network services;

(2) the type, amount, and effectiveness of delivery of public and higher education related services; and

(3) the coordination of public and higher education related services.

KEY: eligible regional service center

July 11, 2011	**Art X Sec 3**
Notice of Continuation September 2, 2014	**53A-3-429(6)**
	53A-1-401(3)

R277. Education, Administration.
R277-708. Enhancement for At-Risk Students Program.
R277-708-1. Definitions.

A. "At-risk of academic failure" for purposes of this rule, means students in public schools grades K-12 who have one or more of the following risk factors as defined under R277-708-1: (1) Low performance on U-PASS tests; (2) Poverty; (3) Limited English Proficiency; and (4) Mobility.

B. "Available funds" for purposes of this rule means the total funds appropriated for Enhancement for At Risk Students Program less funding designated for Gang Prevention under Section 53A-17a-166(1)(b)(i).

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

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

E. "LEA share" for purposes of determining funding under this rule, means the percentage of students from an LEA who qualify under the classifications of: low performing on U-PASS, poverty, mobility, and Limited English Proficiency compared to the total count for the state of Utah from the previous school year.

F. "Limited English Proficiency (LEP)" means the total number of English language (EL) students in an LEA from the previous school year. This count includes:

(1) the number of EL students receiving a score of 1-3 on the English language proficiency assessment; and

(2) the number of students classified as previously-EL who are monitored for two years once classified as English Proficient based on a score of 4 or 5 on the English language proficiency assessment.

G. "Local Education Agency (LEA)" means a public school district or charter school primarily intended to serve students grades K through 12.

H. "Low performance on U-PASS tests" means the unduplicated count of students from an LEA scoring below proficient on the Student Assessment of Growth and Excellence (SAGE) or adaptive testing for Reading/Language Arts from the previous school year.

I. "Mobility" means the number of students enrolled less than 160 days or its equivalent in one school within one school year.

J. "Poverty" means the total number of students in an LEA reported as economically disadvantaged using federal child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

K. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

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

R277-708-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-17a-166 which directs the Board to develop a funding formula, develop performance criteria, administer the program, distribute the appropriation, monitor, and report the effectiveness of the Enhancement for At-Risk Students program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing at-risk student program funds to LEAs. The intent of the rule and the legislative appropriation is to improve academic achievement of students who are at risk of academic failure.

R277-708-3. Applications and Distribution of Funds.

A. Awards shall be made to local education agencies.

B. LEAs shall submit applications annually by November 1 to the USOE through the UCA.

C. LEAs shall receive funding based on an equal weighting of:

(1) low performance on U-PASS tests;

(2) poverty;

(3) mobility; and

(4) limited English proficiency as outlined in 53A-17a-166.

D. LEA allocations shall be based on the certified data from the Data Clearinghouse from the most recent school year for which data is complete and available.

E. Funding formula

(1) LEA base: the USOE shall annually calculate four percent of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs. This base amount shall be equally divided among all eligible LEAs.

(2) LEAs with high poverty schools: the USOE shall annually calculate twenty percent of the state appropriation of the Enhancement for At-Risk Students funding for LEA grants to provide a targeted amount to LEAs with traditional elementary and secondary schools with at least 75 percent poverty. This targeted amount shall be divided among eligible LEAs based on the number of traditional schools with at least 75 percent poverty within the LEA.

(3) Of the funds remaining, the USOE shall determine the LEA share based on the LEA's percentage of students with at-risk factors for the state.

(4) For each LEA, the USOE shall use data from the USOE Data Warehouse from the previous school year to determine the students who qualify under the following definitions:

(a) Low performance on U-PASS tests;

(b) Poverty;

(c) Mobility; and

(d) Limited English Proficiency.

(5) The LEA share shall equal the LEA's statewide proportionate share of qualifying students with at-risk factors times the amount of funds available for distribution.

(6) 2011-2012 funding transition: for the 2011-2012 school year, the USOE shall implement formula adjustments to ensure that no LEA receives less than 65 percent of the funds under the Enhancement for At-Risk Students Program than the LEA received during the 2010-2011 school year under the funds available from the state program that were repealed as part of the enactment of the new Enhancement for At-Risk Students Program.

F. LEAs that qualify for funding and the level of the LEA funding shall be notified annually by June 30.

G. LEAs may use funds for activities that support academic achievement of students who are at risk of academic failure; the LEA shall provide:

(1) as part of the UCA process:

(a) specific goals related to increased academic achievement of students at-risk of academic failure; and

(b) proposed activities that are directly tied to the LEA's plan to increase student achievement;

(2) an annual report of the use of funds; and

(3) an annual report of program effectiveness based on USOE-defined performance criteria.

R277-708-4. Oversight: Monitoring, Evaluation and Reports.

A. The Board may designate no more than one percent of the total appropriation from the Enhancement for At-Risk Students program to be used specifically by the USOE for oversight, monitoring and evaluation of LEAs' implementation of the program and their compliance with the law and this rule.

B. Performance Criteria: Each LEA that receives funding shall submit an annual evaluation report to the USOE consistent with Section 53A-17a-166. The report shall include the following performance criteria for students at-risk of academic failure:

(1) student attendance information, as defined by the USOE;

(2) graduation rate;

(3) gains in language proficiency as measured by the English language proficiency assessment;

(4) gains in reading/language Arts proficiency as measured by SAGE; and

(5) gains in mathematics proficiency as measured by SAGE.

C. The Utah State Office of Education shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature.

R277-708-5. Gang Prevention and Intervention Funds.

A. Consistent with Section 53A-17a-166(1)(b), the Board shall distribute funding to LEAs for gang prevention and intervention.

B. LEAs desiring to receive gang prevention and intervention funds shall submit proposals consistent with R277-436.

KEY: students at risk
October 11, 2011 **Art X Sec 3**
53A-17a-166
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.

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 Substance Abuse and Mental Health;
(3) Division of Juvenile Justice Services;
(4) Division of Child and Family Services;
(5) Utah State Office of Education;
(6) Administrative Office of the Courts;
(7) School district superintendents; and
(8) 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
May 8, 2014 **Art X Sec 3**
Notice of Continuation March 12, 2013 **53A-1-403(1)**
53A-1-401(3)

R277. Education, Administration.
R277-713. Concurrent Enrollment of High School Students in College Courses.
R277-713-1. Definitions.

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by LEAs (as defined in R277-713-1F) receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by an LEA and a USHE institution, to provide college level courses to high school students.

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

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and an LEA. Students continue to be enrolled in public schools, counted in average daily membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.

F. "LEA" means a local education agency which includes school boards/public school districts and charter schools.

G. "Technology-intensive concurrent enrollment courses (TICE)," means designed hybrid courses, having a blend of different learning activities available both in classrooms and online, or courses delivered exclusively online.

H. "USHE" means the Utah System of Higher Education.

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

R277-713-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

R277-713-3. Student Eligibility.

A. LEAs and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience for students.

B. LEAs have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. To ensure that a student is prepared for college level work, an appropriate assessment shall be administered to the student prior to participation in all concurrent mathematics and English courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institutions.

D. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

E. LEAs and USHE institutions shall jointly coordinate advice and information provided to a prospective or current high school student who participates in the concurrent enrollment program consistent with Section 53A-15-101. Advising shall include providing information on general education requirements at USHE institutions and assisting students or parents to efficiently choose concurrent enrollment courses to avoid duplication and excess credit hours.

R277-713-4. Courses and Student Participation.

A. Concurrent enrollment allows students the option to complete high school graduation requirements and prepares students to meet college admission requirements at the conclusion of the eleventh grade, but does not preclude a student involved in accelerated learning programs from graduating by the eleventh grade.

B. USHE institutions have the responsibility to determine the USHE institution credit for concurrent enrollment courses, consistent with USHE policies.

C. College-level courses taught in the high school have the same credit hour value as when taught on a college campus; they apply toward graduation on the same basis as courses taught at a USHE institution to which the credits are submitted.

D. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. There may be a variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

E(1) TICE concurrent enrollment courses are designed as hybrid courses, having a blend of different learning activities available both in classrooms and online, they may be delivered exclusively online.

(2) TICE courses shall facilitate articulation, transfer of credit, and, when possible, use open source materials available to all USHE institutions in order to reduce costs.

F. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

G. The USOE Teaching and Learning Section shall reimburse LEAs only for courses on the USOE master list.

H. The Board of Regents, after consultation with LEAs, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

I. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and the LEA's concurrent enrollment administrator. Concurrent enrollment funding shall not fund unilateral parent/student initiated college attendance or course-taking.

J. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

K. Appropriate USHE institutions shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or

university campus.

L. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

M. LEAs and USHE institutions shall jointly align information technology systems with all individual student academic achievement so that student information will be tracked through both education systems consistent with Section 53A-1-603.5.

R277-713-5. Program Delivery.

A. USHE institutions that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses, with exception of courses delivered through technology, may be offered to high school students only by USHE institutions in the corresponding geographic service region, as determined by the State Board of Regents.

C(1) An LEA may contact the USHE institution in the corresponding geographical service region to provide concurrent enrollment courses, and the higher education institution shall respond to the request within 60 days after the day on which the LEA contacts the institution on whether the institution will offer the requested courses.

(2) If the USHE institution in the corresponding service region denies the request for concurrent enrollment courses, another USHE institution may offer the concurrent enrollment course(s).

(3) Courses delivered through technology are not subject to the corresponding geographic service region requirement.

D. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved.

E. Concurrent enrollment curriculum may be provided through live classroom instruction or telecommunications. The concurrent enrollment program shall be designed and implemented to take full advantage of the most current available educational technology.

F. LEAs shall not be reimbursed for concurrent enrollment courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

G. Concurrent enrollment is intended primarily for students in their last two years of high school.

(1) Concurrent enrollment offerings may not include high school courses that are typically offered in grades 9 or 10.

(2) The Early College High School Program, specifically initiated to encourage students to earn college credit beginning in the ninth grade leading to a college diploma earned concurrently with a high school diploma, may enroll student Program participants in grades 9 and 10 in concurrent enrollment courses.

H. The Board and State Board of Regents shall cooperate closely in developing, implementing and evaluating this program.

I. LEAs shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

A. Secondary students may be assessed a one-time per institution admissions fee required for full-time or part-time students in concurrent enrollment courses. No additional application fee may be charged.

B. A secondary student may be charged partial tuition up to $30 per credit hour for each concurrent enrollment course for which the student receives college credit.

C(1) A USHE institution may charge a concurrent enrollment student who qualifies for free or reduced school lunch partial tuition of no more than $5 per credit hour for each concurrent enrollment course for which the student receives college credit.

(2) If a concurrent enrollment course is taught by a public school educator in a public school facility, a USHE institution may charge a concurrent enrollment student no more than $10 per credit hour for the concurrent enrollment course for which the student receives college credit.

(3) If a concurrent enrollment course is taught through video conferencing, a USHE institution may charge a concurrent enrollment student no more than $15 per credit hour for the concurrent enrollment course for which the student receives USHE credit.

D. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

E. All non-USHE related student costs or fees related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

F. LEAs shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.

G. Credit:

(1) A student shall receive high school credit for a concurrent enrollment course that is consistent with the LEA policies for awarding credit for graduation.

(2) Concurrent enrollment course credit shall count toward high school graduation credit requirements and for college credit; college credit shall be determined by the USHE institution consistent with this rule.

(3) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(4) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

R277-713-7. Faculty Requirements.

A. Public school educators in concurrent enrollment programs shall be approved prior to teaching as adjunct faculty and supervised by a USHE institution. Public school educators shall have secondary endorsements in the subject area(s) in which they teach and meet highly qualified standards for their assignment(s) consistent with R277-510.

B. USHE institution faculty beginning their USHE employment after the 2004-05 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) LEAs and USHE institutions shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

A. LEAs shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse LEAs for concurrent enrollment courses repeated by students. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. The funds shall first be allocated proportionally, based upon student credit hours delivered.

(1) Courses that are taught by public school educators: 60 percent of the funds shall be allocated to LEAs, and 40 percent of the funds shall be allocated to the State Board of Regents.

(2) Courses taught by college or university faculty: 60 percent of the funds shall be allocated to the State Board of Regents, and 40 percent of the funds shall be allocated to LEAs.

C. Each LEA shall receive its proportional share of concurrent enrollment monies allocated to the LEA pursuant to Section 53A-17a-120.5 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

D. The state shall not reimburse LEAs for concurrent enrollment in excess of 30 semester hours per student per year.

E. Funds allocated to LEAs for concurrent enrollment shall not be used for any other program.

F. LEA use of state funds for concurrent enrollment is limited to the following:

(1) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of LEA personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

G. LEAs shall provide the USOE with end-of-year expenditures reports itemized by the categories.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

A. Collaborating LEAs and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, professional development, and reporting mechanisms to be provided by each party to the contract.

(a) each LEA shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.

(b) each LEA shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7.

B. An LEA shall provide a copy of the annual contract entered into between an LEA and a USHE institution for the upcoming school year no later than May 30 annually.

C. The annual concurrent enrollment agreement between a USHE institution and an LEA who has responsibility shall:

(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses counts toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

KEY: students, curricula, higher education

August 26, 2013	**Art X Sec 3**
Notice of Continuation August 14, 2012	**53A-1-401(3)**
	53A-1-402(1)(c)
	53A-15-101
	53A-15-101.5
	53A-17a-120.5

R280. Education, Rehabilitation.
R280-203. Certification Requirements for Interpreters for the Hearing Impaired.
R280-203-1. Definitions.

A. "Advisory board" means the Interpreters Certification Board created to assist the Board created by and with the responsibilities of 53A-26a-201 and 202.

B. "Certification of deaf interpreters" means the written approval of the Board required of individuals seeking payment for facilitating effective communication between hearing and hearing impaired persons.

C. "Signed English, cued speech, American Sign Language (ASL), and oral interpreting" are types of alternative communications for the purposes of this Rule.

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

E. "USOR" means the Utah State Office of Rehabilitation.

R280-203-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the USOR under the policy direction of the Board. The Board is authorized under 53A-1-401(3) to adopt rules and policies in accordance with its responsibilities.

B. The purpose of this rule is to satisfy the directives of 53A-26a-202(2) including:

(1) certification qualifications provided in the UTAH STATE BOARD OF EDUCATION INTERPRETERS AND TRANSLITERATORS FOR THE DEAF CERTIFICATION POLICY AND PROCEDURE MANUAL ("INTERPRETERS/TRANSLITERATORS MANUAL"), December 2002;

(2) procedures governing applications for certification;

(3) provisions for a fair and impartial method of examination of applicants;

(4) procedures for determining unprofessional conduct; and

(5) conditions and procedures for reinstatement and renewal of certification.

R280-203-3. Certification Qualifications.

A. Candidates for certification shall be at least 18 years old.

B. Candidates shall pass written and performance evaluations provided by the Division of Services to the Deaf.

C. Candidates shall meet the criteria of 53A-26a-302.

R280-203-4. Examination of Applicants for Certification.

Individuals applying for interpreter certification shall be tested and rated by the Division of Services for the Deaf and Hard of Hearing Interpreters Certification Panel according to procedures established in the INTERPRETERS/TRANSLITERATORS MANUAL.

R280-203-5. Unprofessional Conduct.

A. The definition of "unprofessional conduct" provided in 53A-26a-502 shall be supplemented with the definition applied to educators in R277-514-3 and provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

B. A complaint alleging unprofessional conduct by a certified interpreter may be filed under the procedure of R277-514. The procedure is provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

C. The complaint shall be reviewed by the Commission as provided for in R277-514-4.

D. A member of the advisory board shall assist the Board in reviewing the recommendation of the Commission, as provided in 53A-26a-202(3).

R280-203-6. Renewal and Reinstatement.

A. An individual holding an interpreter's certificate is eligible to have that certificate renewed as provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

B. An individual whose interpreter's certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the Board. The Board may require the applicant for reinstatement to complete the procedure for certification or may, upon consultation with the advisory board, designate the areas of the application process in which the applicant shall be reviewed.

KEY: certification, interpreters

2003	**53A-24-103**
Notice of Continuation September 9, 2014	**53A-1-401(3)**
	53A-26a-201
	53A-26a-202

R307. Environmental Quality, Air Quality.
R307-342. Adhesives and Sealants.
R307-342-1. Purpose.

The purpose of this rule is to limit emissions of volatile organic compounds (VOCs) from adhesives, sealants, primers and cleaning solvents.

R307-342-2. Applicability.

Beginning September 1, 2014, R307-342 applies to any person who manufactures any adhesive, sealant, adhesive primer or sealant primer in Box Elder, Cache, Davis, Salt Lake, Utah or Weber counties and to any person who sells, supplies, or applies any adhesive, sealant, adhesive primer or sealant primer in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties manufactured on or after September 1, 2014.

R307-342-3. Exemptions.

(1) The requirements of R307-342 do not apply to the following:

(a) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory;

(b) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and exempt solvents, as applied;

(c) Cyanoacrylate adhesives;

(d) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less or that have a net weight of one pound or less, except plastic cement welding adhesives and contact adhesives;

(e) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less;

(f) Aerosol adhesives and primers dispensed from aerosol spray cans; or

(g) Polyester bonding putties to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities.

(2) The requirements of R307-342 do not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents in the following operations:

(a) Tire repair operations, provided the label of the adhesive states "for tire repair only;"

(b) In the production, rework, repair, or maintenance of aerospace vehicles and components, and undersea-based weapon systems;

(c) In the manufacture of medical equipment;

(d) Operations that are exclusively covered by Department of Defense military technical specifications and standards and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(e) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992.

(3) The requirements of R307-342 do not apply to commercial and industrial operations if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the source are less than 200 pounds per calendar year.

(4) Adhesive products and sealant products shipped, supplied or sold exclusively outside of the areas specified in R307-342-2 are exempt from the requirements of this rule.

(5) R307-342 shall not apply to any adhesive, sealant, adhesive primer or sealant primer products manufactured for shipment and use outside of the counties specified R307-342-2 as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of the applicable counties and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the product is not distributed to the applicable counties.

(6) R307-342 shall not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents, provided the total volume of noncomplying adhesives, sealants, primers, cleanup and surface preparation solvents applied facility-wide does not exceed 55 gallons per rolling 12-month period.

(7) Commercial and industrial operations claiming exemption pursuant to R307-342-3 shall record and maintain operational records sufficient to demonstrate compliance.

R307-342-4. Definitions.

The following additional definitions apply to R307-342:

"Acrylonitrile-butadiene-styrene (ABS) welding adhesive" means any adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerospace component" means a fabricated part, assembled part, or completed unit, including passenger safety equipment, of any aircraft, helicopter, missile or space vehicle.

"Architectural sealant or primer" means any sealant or sealant primer intended by the manufacturer to be applied to stationary structures, including mobile homes and their appurtenances. Appurtenances to an architectural structure include, but are not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

"Automotive glass adhesive primer" means an adhesive primer labeled by the manufacturer to be applied to automotive glass prior to installation of the glass using an adhesive or sealant.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic (CPVC) plastic" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is typically identified with a CPVC marking.

"Chlorinated polyvinyl chloride (CPVC) welding adhesive" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleanup solvent" means a VOC-containing material used either to remove a loosely held uncured (i.e., not dry to the touch) adhesive or sealant from a substrate or to clean equipment used in applying a material.

"Computer diskette jacket manufacturing adhesive" means any adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

"Contact bond adhesive" means an adhesive that:

(1) is designed for application to both surfaces to be bonded together;

(2) is allowed to dry before the two surfaces are placed in contact with each other;

(3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

"Contact adhesive" means an adhesive that feels dry to the touch and bonds instantly. Contact adhesives do not include

rubber cements that are primarily intended for use on paper substrates and vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Enclosed cleaning system" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. A spray gun is attached to the enclosed cleaning system by a connection, and solvent is pumped through the gun to clean it. The cleaning solvent falls back into the cleaning system's solvent reservoir for recirculation.

"Flexible vinyl" means non-rigid polyvinyl chloride plastic with at least 5% by weight plasticizer content.

"Fiberglass" means a material consisting of extremely fine glass fibers.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this category.

"Laminate" means a product made by bonding together two or more layers of material.

"Marine deck sealant" or "marine deck sealant primer" means any sealant or sealant primer labeled for application to wooden marine decks.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile and acoustical tile.

"Nonmembrane roof installation/repair adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of nonmembrane roofs and that is not intended for the installation of prefabricated single-ply flexible roofing membrane, including, but not limited to, plastic or asphalt roof cement, asphalt roof coating and cold application cement.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

"Panel installation" means the installation of plywood, pre-decorated hardboard (or tileboard), fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic cement welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic cement welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Plasticizer" means a material such as a high boiling point organic solvent that is incorporated into a vinyl to increase its flexibility, workability, or distensibility, as determined by ASTM Method E-260-96.

"Polyvinyl chloride (PVC) plastic" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, wood, paper and corrugated paperboard.

"Roadway sealant" means any sealant intended by the manufacturer for application to public streets, highways and other surfaces, including but not limited to curbs, berms, driveways and parking lots.

"Rubber" means any natural or manmade rubber substrate, including styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene and ethylene propylene diene terpolymer.

"Sealant primer" means any product intended by the manufacturer for application to a substrate, prior to the application of a sealant, to enhance the bonding surface.

"Sealant" means any material with adhesive properties, including sealant primers and caulks, that is formulated primarily to fill, seal, waterproof or weatherproof gaps or joints between two surfaces. "Sheet-applied rubber installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally ethylene-propylenediene terpolymer, that is field applied to a building roof using one layer of membrane material.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane.

(1) Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes and ducts that protrude through the membrane.

(2) Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes or ducts installed through the membrane.

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane sealant" means any sealant labeled for application to single-ply roof membrane.

"Structural glazing adhesive" means any adhesive intended by the manufacturer to apply glass, ceramic, metal, stone or composite panels to exterior building frames.

"Subfloor installation" means the installation of subflooring material over floor joists, including the construction of any load bearing joists. Subflooring is covered by a finish

surface material.

"Surface preparation solvent" means a solvent used to remove dirt, oil and other contaminants from a substrate prior to the application of a primer, adhesive or sealant.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

"Traffic marking tape" means preformed reflective film intended by the manufacturer for application to public streets, highways and other surfaces, including curbs, berms, driveways and parking lots.

"Traffic marking tape adhesive primer" means any primer intended by the manufacturer for application to surfaces prior to installation of traffic marking tape.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

R307-342-5. Emission Standards.

(1) Beginning September 1, 2014, no person shall manufacturer any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1.

(2) Beginning September 1, 2014, no person shall sell supply or offer for sale any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1 and that was manufactured on or after September 1, 2014.

(3) Beginning September 1, 2014, no person shall apply any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1 unless that person uses an add-on control device as specified in R307-342-8 or unless the adhesive, sealant, adhesive primer or sealant primer was manufactured before September 1, 2014.

(4) The VOC content limits in Table 1 for adhesives applied to particular substrates shall apply as follows:

(a) If a person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 1, such specific limit is applicable rather than an adhesive-to-substrate limit; and

(b) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

TABLE 1

VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives Applied to Particular Substrates (minus water and exempt compounds (compounds that are not defined as VOC), as applied

Adhesive, Sealant, Adhesive Primer Category	VOC Content Limit (grams VOC/liter)
Adhesives	
ABS welding	400
Ceramic tile installation	130
Computer diskette jacket manufacturing	850
Contact bond	250
Cove base installation	150
CPVC welding	490
Indoor floor covering installation	150
Metal to urethane/rubber molding or casting	850
Multipurpose construction	200
Nonmembrane roof installation/repair	300
Other plastic cement welding	510
Outdoor floor covering installation	250
PVC welding	510
Single-ply roof membrane installation/repair	250
Structural glazing	100
Thin metal laminating	780
Tire retread	100
Perimeter bonded sheet vinyl flooring installation	660
Waterproof resorcinol glue	170
Sheet-applied rubber installation	850
Sealants	
Architectural	250
Marine deck	760
Nonmembrane roof installation/repair	300
Roadway	250
Single-ply roof membrane	450
Other	420
Adhesive Primers	
Automotive glass	700
Plastic cement welding	650
Single-ply roof membrane	250
Traffic marking tape	150
Other	250
Sealant Primers	
Non-porous architectural	250
Porous architectural	775
Marine deck	760
Other	750
Adhesives Applied to the Listed Substrate	
Flexible vinyl	250
Fiberglass	200
Metal	30
Porous material	120
Rubber	250
Other substrates	250

R307-342-6. Application Equipment.

(1) An operator shall only use the following equipment to apply adhesives and sealants:

(a) Electrostatic application;

(b) Flow coater;

(c) Roll coater;

(d) Dip coater;

(e) Hand application method;

(f) Airless spray and air-assisted airless spray;

(g) High volume, low pressure spray equipment operated in accordance with the manufacturers specifications; or

(h) Other methods having a minimum 65% transfer efficiency.

(2) Removal of an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment shall be performed as follows:

(a) In an enclosed cleaning system;

(b) Using a solvent with a VOC content less than or equal to 70 grams of VOC per liter of material; or

(c) Parts containing dried adhesive may be soaked in a solvent if the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm Hg at 20 degrees Celsius and the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

R307-342-7. Administrative Requirements.

(1) Each person that manufactures adhesives, sealants, and adhesive primers subject to this rule shall maintain records demonstrating compliance.

(2) Commercial and industrial operations that are not exempt under R307-342-3 shall maintain records demonstrating compliance with this rule, including:

(a) A list of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent in use and in storage;

(b) A material data sheet for each adhesive, sealant, adhesive primer, sealant primer, cleanup solvent and surface preparation solvent;

(c) A list of catalysts, reducers or other components used and the mix ratio;

(d) The VOC content or vapor pressure, as applied; and

(e) The monthly volume of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent used.

(2) Except as provided in R307-342-6(2), no person shall use materials containing VOCs for the removal of adhesives, sealants, or adhesive or sealant primers from surfaces, other than spray application equipment, unless the composite vapor pressure of the solvent used is less than 45 mm Hg at 20 degrees Celsius.

R307-342-8. Optional Add-On Controls.

(1) VOC emissions from the manufacturer or use of all adhesives, sealants, adhesive primers or sealant primers subject to this rule shall be reduced by an overall capture and control efficiency of at least 85% by weight.

(2) The owner or operator of an emission control system shall provide documentation that the emissions control system will attain the requirements of R307-342-8.

(3) The owner or operator of an emission control system shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-342-9. Container Labeling.

Each manufacturer of an adhesive, sealant, adhesive primer or sealant primer subject to this rule shall display the following information on the product container or label:

(1) A statement of the manufacture's recommendation regarding thinning, reducing, or mixing of the product.

(a) R307-342-9 does not apply to the thinning of a product with water.

(b) If the thinning of the product prior to use is not necessary, the recommendation shall specify that the product is to be applied without thinning.

(2) The maximum or the actual VOC content of the product in accordance with Table 1, as supplied, displayed in grams of VOC per liter of product; and

(3) The maximum or the actual VOC content of the product in accordance with Table 1, which includes the manufacture's maximum recommendation for thinning, as applied, displayed in grams of VOC per liter of product.

KEY: air pollution, adhesives, sealants, primers
September 4, 2014 19-2-104(1)(a)

R357. Governor, Economic Development.
R357-7. Utah Capital Investment Board.
R357-7-1. Purpose.

(1) The purpose of these rules is to establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors.

R357-7-2. Authority.

(1) U.C.A. 63M-1-1206, 63M-1-1213, 63M-1-1218 and 63M-1-1220 requires the Utah Capital Investment Board to make rules establishing the manner by which it allocates, issues, certifies, transfers and redeems contingent tax credits.

R357-7-3. Definitions.

(1) "Act" means the Utah Venture Capital Enhancement Act U.C.A. 63M-1-1201.

(2) "Actual Return" means the actual aggregate amount of moneys or the fair market value of property received from a fund of funds by a designated investor, with respect to an investment amount for which a certificate is issued, including amounts received as returns of invested capital or returns on invested capital and amounts received in excess of invested capital, in whatever form received for the period from the date of the closing to the applicable maturity date.

(3) "Board" means the Utah Capital Investment Board created under U.C.A. 63-M-1-1203 (1)

(4) "Certificate" or "tax credit certificate" means a document constituting a contract between the state of Utah and a holder and evidencing a tax credit that has been issued and, subject to the contingencies described on the certificate that may become available to the holder.

(5) "Certificate register" means the register to be maintained by the board recording the name, address, and taxpayer identification number of each holder and the maximum potential amount of the tax credits represented by each certificate issued to each holder.

(6) "Certified tax credits" means tax credits that have been verified by the board to the commission and to the holder of the certificate that represents such tax credits.

(7) "Closing" means a time when a certificate is issued to a designated investor in exchange for a commitment to contribute cash to the capital of a fund of funds.

(8) "Commission" means the Utah State Tax Commission.

(9) "Commitment" means either a binding obligation undertaken at closing to invest in a fund of funds in the future or an actual investment made in a fund of funds, but without counting the same amount twice.

(10) "Contingencies" shall mean the conditions under which a tax credit may be claimed and shall include each of the following;

(a) The condition that the tax credits may only be used to the extent that the actual return on the investment amount associated with the certificate is less than the applicable scheduled return on such investment amount, and then only to the extent such tax credit becomes a certified tax credit.

(b) The condition that the amount of the total verified tax credits represented by such certificate that may be claimed during any redemption year will be limited to the amount certified by the board to the commission.

(c) The condition that no amount of the tax credit may be claimed prior to a maturity date stated on the certificate; and

(d) The condition that the receipt by the designated investor of an actual return on the investment amount associated with the certificate equal to the scheduled return on such investment amount will result in the cancellation of the tax credit certificate.

(11) "Corporation" means the Utah Capital Investment Corporation created under Section U.C.A. 63M-1-1207.

(12) "Day" means any weekday Monday through Friday that is not a legal holiday of the state of Utah.

(13) "Designated investor" means a natural person or an entity, other than the corporation, that has committed to contribute capital to a fund of funds, and such person's or entity's successors or assignees.

(14) "Designated purchaser" means:

(a) a person who enters into a written undertaking with the board to purchase a commitment; or

(b) a transferee who assumes the obligations to make the purchase described in the commitment.

(15) "Fiscal year" means the fiscal year for the state of Utah.

(16) "Fund of funds" means any private, for-profit limited partnership or limited liability company established by the corporation to which a designated investor commits to make a capital contribution.

(17) "Holder" means a holder of a tax certificate, either as a designated investor or as a transferee of a designated investor, as reflected on the certificate register.

(18) "Investment amount" means the amount of cash contributed by a designated investor to a fund of funds with respect to which a certificate has been issued.

(19) "Maturity date" means a specific date or dates specified in a certificate, representing the earliest date of which a holder of the certificate may use it.

(20) "Percentage of Return" means the percentage represented by the quotient of (1) the actual return for a designated investor on the investment amount associated with a certificate divided by (2) the scheduled return for such designated investor on such investment amount.

(21) "Portfolio entity" means a venture capital fund or direct investment entity in which a fund of funds makes an investment.

(22) "Rate of return" means Internal Rate of Return calculated inclusive of all cash flows both positive and negative in addition to the fair market value of unrealized investments.

(23) "Redeem" means, with respect to a certificate, to present such certificate to the commission as payment due on or after the date of such presentation.

(24) "Redemption reserve" means the reserve established by the corporation to facilitate the cash redemption of certificates.

(25) "Redemption year" means each calendar year for which certified tax credits associated with a certificate may first be utilized.

(26) "Scheduled return" means the scheduled return, whether in money or property, (including returns of and returns on investment) with respect to an investment amount associated with a certificate issued to a designated investor in a fund of funds determined in accordance with the limited partnership agreement or the operating agreement of such fund of funds for the period from the date of the closing to the applicable maturity date. If relevant for determining the amount of the scheduled return, the board shall presume that a verified credit will be transferred at 100 percent of the amount stated on the certified tax credit. It shall be the burden of a designated investor to show that the certified tax credit cannot be transferred without discounting the amount stated on such credit.

(27) "Tax credit" means a contingent, refundable tax credit authorized by U.C.A. 63M-1-1218(4)(e).

R357-7-4. Requirements of the Utah Capital Investment Corporation.

(1) Within 20 days prior to each closing, the corporation shall deliver a written report to the board containing the following information:

(a) a copy of the certificate of limited partnership or articles of organization of the fund of funds for which a closing is scheduled;

(b) a summary of the terms of the anticipated investments in such fund of funds as contained in the limited partnership agreement or the operating agreement of the funds of funds;

(c) a statement of the anticipated date of the closing; and

(d) evidence that the designated investor is an accredited investor.

(2) No less than two days prior to each closing, the corporation shall deliver to the board a signed statement of an officer of the corporation certifying the names, addresses, and taxpayer identification numbers of the persons expected to be designated investors at the closing, the total amount of the capital commitments expected to be received at the closing, the maximum amount of tax credits to be represented by each certificate to be issued at the closing, the date of the anticipated closing, the maturity date or dates for each certificate to be issued at closing, the contingencies applicable to the tax credits, and the calculation formula for determining the scheduled return.

R357-7-5. Allocation and Issuance of Certificates.

(1) Certificates shall be issued only by the board and only with respect to an actual capital commitment to a fund of funds. The board shall not issue a certificate until it has verified that the Utah Fund of Funds has agreed to treat the tax credits as a loan from the state of Utah, and the terms for the repayment of the loan.

(2) Following receipt of the certification of the corporation, the board shall issue a certificate to each such designated investor at closing.

(3) The maximum amount of the tax credits represented by each certificate shall be calculated in accordance with the limited partnership agreement or operating agreement of the applicable fund of funds or loan agreement between a designated investor and a fund of funds and will be subject to the limitations stated in the U.C.A. 63M-1-1218 (2)(a)(c).

(4) A tax credit certificate shall contain, or incorporate by reference to another document, each of the following:

(a) the name, address, and tax identification number of the holder;

(b) the amount of the investment commitment;

(c) all of the contingencies applicable to the tax credits;

(d) the date of issuance of the certificate;

(e) the maximum amount of the tax credit represented by the certificate;

(f) the maturity date of the certificate;

(g) the formula to be used to determine the total amount of return owed to the designated investor;

(h) if the certificate is issued upon a transfer after certification, the amount of the certified tax credits represented by such certificate and the redemption year(s); and

(i) the credit code to use to claim the credit on the Utah State tax return.

(5) All other requirements as set forth in U.C.A. 63M-1-1218(6).

R357-7-6. Procedures for Certification of Tax Credits.

(1) At any time after the applicable maturity date for a certificate, the holder may present such certificate to the board for certification no later than June 30 of the calendar year maturity date stated on the certificate.

(2) Prior to certification the board will verify that no funds are available in the redemption reserve account.

(3) The corporation, and any entity with which the corporation has entered into agreements pursuant to the investments and financial transactions described in U.C.A. 63M-1-1207(2)(e), shall provide all documents that the board finds are, or may become, necessary for the board to certify the amount of tax credits to be issued pursuant to the chapter. Such documents include but are not limited to the following:

(a) Financial transactions related to the corporation, the Utah Fund of Funds, designated investors, lenders, or portfolio entities.

(b) Financial documents, loan agreements, and security instruments to which any of the corporation, the Utah Fund of Funds, designated investors, lenders, or a portfolio entity is a party.

(c) Investment agreements to which any of the corporation, Utah Fund of Funds, designated investors, lenders, or a portfolio entity is a party.

(d) All legal documents and correspondence outlined herein to which any of the corporation, the Utah Fund of Funds, designated investors, lenders, or a portfolio entity is a party.

(e) All documents and financial information necessary to calculate the actual return, scheduled return, and the percentage of return.

(f) Any other documents the board deems necessary to assess compliance with this chapter or to correctly verify the amount of tax credits related to a certificate issued pursuant to this chapter.

(4) Within 30 days of the receipt of all documents and information pursuant to subsection (3) the board shall establish and certify the amount of tax credits related to that certificate, if any, which may be initially used in each redemption year.

(5) The board shall issue to the holder of such certificate a certification setting forth (a) the amount of certified tax credits represented by such certificate (if any) and (b) the amount of certified tax credits represented by such certificate and redemption year (if any).

(6) If the certified certificate has more than one maturity date, the board shall issue to the holder a certificate for the certified tax credits. The certified certificate will contain no contingencies. The board shall issue one or more balance certificates for any maturity dates for which the tax credits are not then being certified.

(7) Certificates being certified for a maturity date shall be certified pro rata with all other certificates being certified for the same maturity date.

(8) If a contingent certificate has more than one maturity date, the most recent maturity date prior to the date on which the certificate was presented to the board for certification shall be the maturity date used for purposes of certification under this rule.

(9) Once a tax credit has been certified, the board will notify the Commission of such certification within 7 days.

R357-7-7. Contractual Nature of Certificates; Irrevocability of Tax Credits.

(1) Upon the issuance of a certificate, the entitlement of a holder to use the tax credits represented by the certificate shall be final and permanent, subject only to the contingencies expressly stated or incorporated by reference in the certificate, and such entitlement shall not be subject to any further condition, reduction, modification, amendment, change, revocation, or recapture.

(2) The entitlement of a holder to claim tax credits represented by a certificate shall constitute a contract between the state of Utah on the one hand and such holder and the holder's successors and assignees on the other hand which shall not be subject to modification, amendment, change or rescission without prior written consent of the holder as of the date of any such purported action. No such modification, amendment, change or recession to which a holder may have agreed shall be binding upon any of the successors or assignees of such holder unless it is stated in the text of the certificate issued to such successor assignee.

(3) The entitlement of a holder to claim tax credits represented by such certificate shall not be affected in any way or become subject to forfeiture or recapture by:

(a) Action or inaction of the holder or designated investor;

(b) The transfer by the designated investor of all our any portion of the designated investor's interest in a fund of funds;

(c) The determination after the closing that a fund of funds was not organized or did not make its investments in accordance with the requirements of the Act or these rules;

(d) The invalidity or illegality for any reason of the existence or functions of the board, a fund of funds, or the corporation or any portfolio entity for any reason;

(e) The bankruptcy, insolvency, reorganization, merger, consolidation, dissolution or liquidation of the board, a fund of funds, or the corporation or any portfolio entity for any reason; or

(f) The level, timing or degree of success of any fund of funds or any portfolio entities, or the extent to which venture capital funds that are portfolio entities are invested in Utah venture capital projects, or are successful in accomplishing any economic development objective.

(4) If the legal existence of the board, a fund of funds, the corporation or the commission is ended or some or all of its respective functions are transferred to another entity at any time prior to the full use of 100 percent of the tax credits that could potentially be represented by all of the certificates, the board or its successor (or the state of Utah if the legal existence of the board ends or the board ceases to have the requisite authority and there is no successor with such authority) shall adopt such rules as may be necessary to ensure the continuity and effectiveness of the entitlement of each holder to use the tax credits represented by such holder's certificate.

R357-7-8. Transfer of Tax Credit Certificates.

(1) Certificates shall be transferrable by the holders and any subsequent holders to any transferee or transferees.

(2) Transfer of a certificate may be effected only by the holder's surrender of the certificate to the board with an endorsement in favor of the transferee, or transferees, and a statement containing the name, address and tax identification number of the transferee, and a written request for the board to issue a replacement certificate or certificates in the name of the transferee(s) (as well as, in any case where the transferor request that more than one replacement certificate be issued, a statement by the transferor that sets forth the aggregate amount of tax credits represented by the transferred certificate that are to be represented by each replacement certificate).

(3) Within 20 days after the surrender and endorsement of a certificate, the board shall issue a replacement certificate or certificates in the name of the transferee(s). Once a transferor of a certificate has surrendered a certificate to the board, such transferor may no longer use the tax credits represented by such a certificate.

(4) A holder shall have the right to pledge and grant security interests in certificates and tax credits held by such holder as collateral for loans to or other obligations of the holder.

R357-7-9. Cancellation of Tax Credits Upon Receipt of the Scheduled Return.

(1) Tax credits represented by a certificate are subject to cancellation only as provided in the certificate and upon receipt by the designated investor of an actual return equal to the designated investor's scheduled return with respect to such certificate.

(2) At the time of each distribution to a designated investor in a fund of funds, the corporation shall determine the amount of tax credits related to each certificate that have been cancelled and have become null and void by reason of such distribution, if any, and shall certify such amount to the board.

(a) After any such certification, the board shall certify to the holder of each such certificate, at the holder's address as shown on the certificate register, and to the commission the amount of tax credits that are deemed to have been cancelled and to be null and void.

(b) If at any time prior to a certification of a certificate the actual return of a designated investor shall equal the designated investor's scheduled return with respect to such a certificate, and all other conditions for cancellation contained in the certificate have been met, the corporation shall so certify to the board.

(c) After any such certification, the board shall certify to such holder at the holder's address shown on the certificate register and to the commission that such certificates shall be deemed to have been cancelled and to be null and void. Tax credits that are cancelled may be reissued with respect to the same or another fund of funds.

R357-7-10. Lost or Mutilated Tax Credit Certificates.

Upon receipt of evidence satisfactory to the board of the loss, theft, destruction or mutilation of any certificate, and in case of any such loss, theft or destruction, upon delivery of any indemnity agreement satisfactory to the board, or in case of any such mutilation, upon surrender and cancellation of such certificate, the board shall issue an deliver to the holder a replacement certificate within twenty days.

R357-7-11. Redeeming the Tax Credit Certificates.

(1) Once certified by the board, the holder of the tax credit certificate may present such certificate to the commission for redemption subject to the following provisions:

(a) The contingent tax credit certified by the board shall be claimed for a tax year of the designated investors, or transferee, that begins during the same year as the stated maturity date listed on such certificate. The designated investor (or a transferee of the Certified Contingent Credit) may submit to the commission at any time following the date of such certification by the board, but no later than the general filing deadline for Utah State tax returns (including extensions) for the redemption year.

(b) The person or entity claiming a refund must timely file a Utah State tax return claiming a refundable credit; and no other filing or forms or actions are necessary, and no other conditions apply, for obtaining a refund in respect of such tax credit. The commission will manually process a tax return with a claim for refund certified by the board and will pay the amount indicated on such tax return (such payment generally, but not always, made within ninety (90) days from the date for such return (the "Due Date")). If the board notified the commission of the filing of a claim for refund by the designated investor, the commission will take steps to expedite the refund.

(2) There is no limitation on a person:

(a) filing more than one claim for refund with the commission, or

(b) receiving more than one refund from the commission, in each case, in any one calendar year or other twelve (12) month period.

(3) If an entity is not otherwise a Utah taxpayer, its taxable year, for purposes of the Utah Act, shall be considered to end annually on the same date that its tax year ends for US federal income tax purposes. For a disregarded entity that is not otherwise a Utah taxpayer, such entity may designate any date on which its taxable year ends by stating such date on the Utah tax return on which it files its claim for refund.

(4) If the investor or any transferee is a corporation or other business organization or entity included in a combined Utah state tax return, and such tax return claims a tax credit, the commission will treat such tax credit as a refundable credit for the combined group.

R357-7-12. Criteria and Procedures for Assessing the Likelihood of Future Certificate Redemptions by Designated

Investors.

(1) On an annual basis, the corporation staff and/or the Allocation Manager will provide the board with a comprehensive report including the following:

(a) a detailed accounting of cash outflows and cash inflows from fund investments during the year.

(b) a detailed accounting of payments made to lenders or equity investors during the year.

(c) a detailed accounting of management fees paid to the corporation during the year.

(d) a detailed accounting of increases or decreases in unrealized value during the year.

(e) a five year projection of cash flows with sensitivity around investment returns, interest rates, and distribution pacing.

(f) third party audit of the Utah Fund of Funds including asset valuation.

(g) verification of individual portfolio fund IRR.

R357-7-13. Target Rate of Return or Range of Returns on Venture Capital Investments of the Utah Fund of Funds.

The target rate of return on venture capital investments of the Utah Fund of Funds is a minimum of 5%. The corporation will submit to the board annually a detailed accounting of the calculation of the rate of return. It is understood by the board that the fund that returns in the early years of the fund will likely be negative.

R357-7-14. Certificate Registry.

A certificate register detailing all transactions involving the certificates shall be held and maintained at the Office of the Utah Treasurer.

KEY: economic development, capital investments
September 11, 2014 63M-1-1206

R392. Health, Disease Control and Prevention, Epidemiology and Laboratory Services.
R392-104. Feeding Disadvantaged Groups.
R392-104-1. Scope.

(1) The scope of this rule is very narrow, only being directed at charitable organizations feeding disadvantaged groups as defined by this rule at an event free of any charge, admission fee or required or suggested donation.

(2) Charitable organizations which do not meet the requirements of R392-104, must meet the requirements of R392-100.

R392-104-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Executive Director" means the Executive Director of the Utah Department Of Health or designated representative.

(3) "Disadvantaged Group" means a homeless or temporarily displaced group.

(4) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or designated representative.

(5) "Charitable Organization" means a group of any size who desire to feed disadvantaged groups under the requirements of this rule.

(6) "Event" for purposes of this rule means an organized activity where food is offered free of any charge, admission fee or required or suggested donation to a disadvantaged group.

R392-104-3. Permit and Certification Exemptions.

(1) Charitable organizations which feed disadvantaged groups as defined by this rule at an event free of any charge, admission fee or voluntary donation, are exempt from:

(a) the requirement of obtaining a food service operating permit from a local health department;

(b) the food safety manager requirements of R392-101; and

(c) the food handler requirements of R392-103.

(2) Charitable organizations that charge a fee or suggest a voluntary donation at the event are not exempt from R392-100, R392-101, and R392-103.

R392-104-4. Charitable Organization Requirements.

(1) A representative of a charitable organization shall notify the local health department of the intent to feed a disadvantaged group and shall provide a list of the date, location, and time of events and the charitable organization contact information. A charitable organization shall notify the local health department of any changes to the list before they occur.

(2) Charitable organizations shall contact a local health department and obtain information concerning food safety and safe food handler practices as required by this rule.

(3) Charitable organizations feeding a disadvantaged group shall provide instruction obtained from the local health department to those persons who will be functioning as food handlers at an event.

(4) Charitable organizations shall follow the food safety and safe food handler practices as provided in the information given by a local health department.

(5) Charitable organizations are subject to enforcement procedures outlined in UCA 26A-1-114.

R392-104-5 Local Health Department Requirements.

(1) Local health departments shall provide statewide uniform food safety and food handling information based on approved temporary event guidelines, Centers for Disease Control and Prevention five risk factors associated with food-borne illness outbreaks, and food safety principles as found in R392-100. Local health departments shall provide the charitable organization this information initially and after any updates have been made to the guidelines.

(2) Local health departments shall maintain a register of charitable organization events at no cost to the charitable organization.

KEY: public health, food services
September 12, 2014 **26-1-30(2)**
26-15-5
26-15a-104

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-1. Newborn Screening.
R398-1-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-30(2)(a), (b), (c), (d), and (g) and 26-10-6.

R398-1-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R398-1-8.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R398-1-3. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

(2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;
(b) Congenital Adrenal Hyperplasia;
(c) Congenital Hypothyroidism;
(d) Galactosemia;
(e) Hemoglobinopathy;
(f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);
(ii) Tyrosinemia type 1(fumarylacetoacetate hydrolase deficiency);
(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);
(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);
(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);
(vi) Homocystinuria (cystathionine beta synthase deficiency);
(vii) Citrullinemia (arginino succinic acid synthase deficiency);
(viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);
(ix) Argininemia (arginase deficiency);
(x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);
(g) Fatty Acid Oxidation Disorders:
(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;
(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;
(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;
(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
(vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);
(vii) Carnitine Palmitoyl Transferase I Deficiency;
(viii) Carnitine Palmitoyl Transferase 2 Deficiency;
(ix) Carnitine Acylcarnitine Translocase Deficiency;
(x) Multiple Acyl CoA Dehydrogenase Deficiency;
(h) Organic Acids Disorders:
(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);
(ii) Methylmalonic acidemia (multiple enzymes);
(iii) Malonic Aciduria;
(iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);
(v) 2-Methylbutiryl CoA dehydrogenase deficiency;
(vi) Isobutyryl CoA dehydrogenase deficiency;
(vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;
(viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);
(ix) 3-Methylcrotonyl CoA carboxylase deficiency;
(x) 3-Ketothiolase deficiency;
(xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;
(xii) Holocarboxylase synthase (multiple carboxylases) deficiency;
(i) Cystic Fibrosis; and
(j) Severe Combined Immunodeficiency syndrome.

R398-1-4. Responsibility for Collection of the First Specimen.

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior

to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R398-1-5. Timing of Collection of First Specimen.

The first specimen shall be collected between 48 hours and five days of age. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R398-1-6. Parent Education.

The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R398-1-7. Timing of Collection of the Second Specimen.

A second specimen shall be collected between 7 and 28 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R398-1-8. Criteria for Appropriate Specimen.

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening form;

(c) Not use the Newborn Screening form beyond the date of expiration;

(d) Not alter the Newborn Screening form in any way;

(e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R398-1-9. Abnormal Result.

(1) (a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R398-1-10. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

(1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R398-1-8. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.

(2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

R398-1-11. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical

home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

R398-1-12. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R398-1-13. Noncompliance by Parent or Legal Guardian.

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

R398-1-14. Confidentiality and Related Information.

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R398-1-9(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R398-1-15. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

R398-1-16. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

R398-1-17. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

R398-1-18. Statutory Penalties.

As required by Subsection 63G-3-201(5): Any medical home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: health care, newborn screening
July 1, 2014 26-1-6
Notice of Continuation September 24, 2014 26-1-30(2)(a)(i), (b), (c), (d), and (g) 26-10-6

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-5. Birth Defects Reporting.
R398-5-1. Purpose and Authority.

This rule establishes reporting requirements for birth defects and stillbirths in Utah and for related test results. Sections 26-1-30(2)(c), (d), (e), (g), (p), (t), 26-10-1(2), and 26-10-2 authorize this rule.

R398-5-2. Definitions.

As used in this rule:

(1) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(2) "Birth defect" means any medical disorder of organ structure, function or biochemistry which is of possible genetic or prenatal origin. This includes any congenital anomaly, indication of hypoxia or genetic metabolic disorder listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with any of the following diagnostic codes: 243, 255.2, 255.4, from 269.2 to 279.9, from 740.0 to 759.9; and from 768.0 to 768.9; or listed in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with any of the following diagnostic codes: E03, E25, from E70 to E90, from D55 to D58, J96.00 to J96.91, P09, and from Q00-Q99.

(3) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(4) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

(5) "Clinic" means physician-owned or operated clinic that regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

R398-5-3. Reporting by Hospitals and Birthing Centers.

Each hospital or birthing center that admits a patient and detects or screens for a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

(1) if live born, child's name;
(2) child's date of birth (or date of delivery);
(3) mother's name;
(4) mother's date of birth;
(5) delivery hospital;
(6) birth defects and hypoxia/hypoxemia diagnoses;
(7) pulse oximetry results for all initial and repeat screenings, including limb location;
(8) mother's state of residency at delivery;
(9) child's sex; and
(10) mother's zip code.

R398-5-4. Reporting by Laboratories.

Each laboratory operating in the state that identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

(1) if live born, child's name and date of birth;
(2) mother's name;
(3) mother's date of birth;
(4) date the sample is accepted by the laboratory;
(5) test conducted;
(6) test result; and
(7) mother's state of residency at delivery.

R398-5-5. Record Abstraction.

Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures or treatments (including diagnostics) related to the birth defect or stillbirth, and outcomes of that and other pregnancies by that mother. Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the affected child's files, throughout their lifespan.

R398-5-6. Liability.

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

R398-5-7. Penalties.

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $1,000 upon an administrative finding of a first violation and up to $3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court.

KEY: birth defects, birth defect reporting
July 31, 2012 26-1-30(2)(c), (d), (e), (g), (p), (t)
Notice of Continuation September 2, 2014 26-10-1(2)
26-10-2
26-25-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10B. Children's Organ Transplants.
R414-10B-1. Authority and Purpose.

(1) Authority for this rule is found in Title 63G, Chapter 3.

(2) The purpose of this rule is to set forth criteria to determine eligibility for and the awarding of financial assistance to children who need organ transplants.

R414-10B-2. Definitions.

(1) "Eligible recipient" means a person who is 18 years of age or younger at the time an application for financial assistance is made and who has resided, or whose legal guardian has resided, within the state for at least six months prior to applying for financial assistance.

(2) "Initial Medical Expenses" include assessments and evaluations of prospective organ transplant recipients and potential organ donors, actual surgical costs, post-operative care or treatment, COBRA payments, and spenddowns or other related costs for Medicaid or other public assistance eligibility, but does not include travel and living expenses for recipients or families.

R414-10B-3. Allowable Medical Expenses and Organ Transplants.

Eligible recipients may apply for financial assistance for eligible medical expenses for any type of organ transplant. Each recipient shall have a maximum lifetime benefit of $10,000.

R414-10B-4. Determining Eligibility.

Eligibility for awarding financial assistance shall be based on:

(1) whether the person is an eligible recipient; and

(2) documentation, through physician assessment and evaluation, of the need for the organ transplant.

R414-10B-5. Awarding Financial Assistance to Eligible Recipients.

(1) Prior to awarding financial assistance the committee shall review the recipient's request for assistance to determine:

(a) the needs of the eligible recipient both physically and financially; and

(b) the existence of other financial assistance including availability of insurance or other state aid.

(2) Each eligible recipient must apply for applicable Medicaid, Medicaid disability, and Children's Health Insurance Program assistance before the committee agrees to award any financial assistance. This does not preclude the committee from using funds to negotiate with transplant centers or hospitals to place the name of the eligible recipient on a waiting list for an organ transplant.

(3) As part of the review process a legal guardian of the eligible recipient must sign a release to allow all medical records of the child to be released to the Department of Health. The Department of Health shall provide assistance to the committee by determining:

(a) that the proposed organ transplant is not experimental; and

(b) the extent of the threat to the child's life without the organ transplant.

(4) In addition, the committee must consider the availability of funds in the Children's Organ Transplant trust account before awarding financial assistance.

R414-10B-6. Terms for Repayment of Financial Assistance Loans.

Financial assistance shall be given in the form of an interest free loan. Terms, including amount and time frame for repayment of loans shall be set forth in a contract as agreed to by both parties.

R414-10B-7. Waiver of Loan Repayment.

Applicants may request that all or part of the repayment due under the contract for financial assistance be waived by the committee. As a condition of granting a waiver, the committee shall make a finding that repayment of the financial assistance would impose an undue financial burden on the child.

R414-10B-8. Organ Donor Awareness Activities.

The committee shall adopt policies for the award of funds from the Children's Organ Transplant trust account for Organ Donor Awareness Activities.

KEY: organ transplants
February 17, 2000 26-1-5
Notice of Continuation December 2, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-13. Psychology Services.
R414-13-1. Introduction.

Psychologists may provide services for Medicaid recipients in accordance with the Psychology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid
September 25, 2014 26-1-5
Notice of Continuation November 14, 2012 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-33D. Targeted Case Management for Individuals with Serious Mental Illness.
R414-33D-1. Introduction.

Targeted Case Management may be provided to Medicaid recipients with serious mental illness in accordance with the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid
September 25, 2014 26-1-5
Notice of Continuation June 7, 2010 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-36. Rehabilitative Mental Health and Substance Use Disorder Services.
R414-36-1. Introduction.

Rehabilitative mental health and substance use disorder services may be provided to Medicaid recipients in accordance with the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid
September 25, 2014 26-18-3
Notice of Continuation October 21, 2009

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community-Based Services Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2013;

(2) Waiver for Individuals Age 65 or Older, effective July 1, 2010;

(3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2014;

(4) Waiver for Individuals with Physical Disabilities, effective July 1, 2011;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2010;

(6) New Choices Waiver, effective July 1, 2010.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid
September 26, 2014 26-18-3
Notice of Continuation February 24, 2010

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Authority and Purpose.

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

R414-304-2. Definitions.

(1) The definitions in Rule R414-1, Rule R414-301, and Rule R414-303 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

(b) "Allocation for a spouse" means an amount of income that is the difference between the Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Basic maintenance standard" or "BMS" means the income level for eligibility for Medicaid coverage of the medically needy based on the number of family members who are counted in the household size.

(d) "Benefit month" means a month or any portion of a month for which an individual is eligible for medical assistance.

(e) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(f) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(g) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(h) "Factoring" means that the eligibility agency calculates the monthly income by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(i) "Family Medicaid" means medical assistance for families caring for dependent children and is a general term used to refer to Medicaid coverage for medically needy parents, caretaker relatives, pregnant women, and children.

(j) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse, the spouse of the client, and the parents of a dependent child.

(k) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(l) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(m) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(n) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(o) "Income anticipating" means using current facts regarding rate of pay and number of working hours, and reasonably expected future income changes, to anticipate future monthly income.

(p) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(q) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(r) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(s) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed one-third of the SSI federal benefit rate plus $20.

(t) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(3) The eligibility agency may not count Veteran's Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual makes because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The eligibility agency may only count as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.

(5) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(6) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(7) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-

kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(8) The eligibility agency shall count as income of the child, child support payments received from a parent or guardian for past months or years.

(9) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(10) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(11) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(12) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(13) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(14) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and

(g) child care necessary for school attendance.

(15) The eligibility agency may not count as income, payments from a qualified long-term care insurance partnership plan as defined in 42 U.S.C. 1396p(b)(1)(C)(iii), paid directly to a long-term care provider or collected by the Office of Recovery Services as a third-party liability source.

(16) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is

over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(17) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(18) The eligibility agency shall deem any unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for Medicaid for emergency services only.

(19) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(20) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(21) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(22) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-4. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, and Appendix to Subpart K of 416, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, effective January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency shall allow the provisions found in Subsection R414-304-3(3) through (14), and (18) through (22).

(3) The eligibility agency shall determine income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(4) For the MWI program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other MWI program eligibility factors are eligible without paying a Medicaid buy-in premium.

(5) The eligibility agency shall determine household size and whose income counts for the MWI program as described below:

(a) If the MWI program individual is an adult and is not living with a spouse, the eligibility agency may only count the income of the individual. The eligibility agency shall include in the household size, any children of the individual who are under 18 years of age, or who are 18, 19, or 20 years of age and are

full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the MWI program individual is living with a spouse, the eligibility agency shall combine their income before allowing any deductions. The eligibility agency shall include in the household size the spouse and any children of the individual or spouse under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the MWI program individual is a child living with a parent, the eligibility agency shall combine the income of the MWI program individual and the parents before allowing any deductions. The eligibility agency shall include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603, October 1, 2012 ed., which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The eligibility agency elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831,October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to $30 a calendar quarter per household member. Any amount that exceeds $30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for medically needy Medicaid, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct $30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either $30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or

repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the income by choice, and the client reasonably expects to receive the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for emergency services only.

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-7. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1110 through 416.1112, April 1, 2012 ed. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the (SSA), the eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self-support goals. This income may include earned and unearned income.

(3) The eligibility agency may not deduct from income expenses relating to the fulfillment of a plan to achieve self-support.

(4) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant.

(5) For aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct $125 from earned income before it determines contribution towards cost of care.

(6) The eligibility agency shall include capital gains in the gross income from self-employment.

(7) To determine countable net income from self-employment, the eligibility agency shall allow a 40% flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual who has allowable business expenses greater than the 40% flat rate exclusion amount and who also provides verification of the expenses, the eligibility agency shall calculate the self-employment net profit amount by using the deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow deductions for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;
(c) net losses from previous tax years;
(d) taxes;
(e) money set aside for retirement; and
(f) work-related personal expenses.

(9) The eligibility agency may deduct net losses of self-employment from the current tax year from other earned income.

(10) The eligibility agency shall disregard earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude this income for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XIII) and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions from earned income that include insurance premiums, savings, garnishments, or deferred income in the month when the client could receive the funds.

R414-304-8. Earned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811, 435.831, October 1, 2012 ed., and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), October 1, 2012 ed. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count the income of a dependent child if the child is:

(a) in school or training full-time;

(b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day and employed less than 100 hours a month; or

(c) is in a job placement under the federal Workforce Investment Act.

(3) For medically needy Family Medicaid, the eligibility agency shall allow the AFDC $30 and one-third of earned income deduction if the wage earner receives Parent/Caretaker Relative Medicaid in one of the four previous months and this disregard is not exhausted.

(4) The eligibility agency shall determine countable net income from self-employment by allowing a 40 % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 % flat rate exclusion amount, the eligibility agency shall allow actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(6) For Family Medicaid, the eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month a maximum of $200 a month in child care costs for each child who is under the age of two and $175 a month in child care costs for each child who is at least two years of age. The maximum deduction of $175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of $160 a month in child care costs for each child who is under the age of two and $140 a month for each child who is at least two years of age. The maximum deduction of $140 a month shall also apply to provide care for an incapacitated adult.

(7) For Family Institutional Medicaid, the eligibility agency shall deduct a maximum of $160 in child care costs from the earned income of clients who work at least 100 hours in a calendar month. The eligibility agency shall deduct a maximum of $130 in child care costs from the earned income of clients working less than 100 hours in a calendar month.

(8) The eligibility agency shall exclude earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.301(b)1, 435.308, 435.310 and individuals defined in Title XIX of the Social Security Act Section 1902(e)(1), (7), and Section 1925. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

R414-304-9. Aged, Blind and Disabled Non-Institutional Medicaid and Medically Needy Family, Pregnant Woman and Child Non-Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, October 1, 2012 ed.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the eligibility agency shall deduct from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(3) To determine eligibility for and the amount of a spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The eligibility agency shall also deduct from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(a) The eligibility agency shall deduct the entire payment in the month it is due and may not prorate the amount.

(b) The eligibility agency may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or coverage groups subject to the use of MAGI-based methodologies.

(4) To determine the spenddown under medically needy programs, the eligibility agency shall deduct from income health insurance premiums that the client or a financially responsible family member pays in the application month or during the three-month retroactive period. The eligibility agency shall allow the deduction either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

(5) To determine eligibility for medically needy coverage groups, the eligibility agency shall deduct from income medically necessary expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client, a dependent

sibling of a dependent client, a deceased spouse, or a deceased dependent child;

(b) Medicaid does not cover the medical bill and it is not payable by a third party;

(c) The medical bill remains unpaid or the client receives and pays for the medical service during the month of application or during the three months immediately preceding the date of application. The date that the medical service is provided on an unpaid expense is irrelevant if the client still owes the provider for the service. Bills for services that the client receives and pays for during the application month or the three months preceding the date of application can be used as deductions only through the month of application.

(6) The eligibility agency may not allow a medical expense as a deduction more than once.

(7) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(8) The eligibility agency shall deduct medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the eligibility agency shall deduct paid expenses before unpaid expenses.

(9) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The Department may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown when the client assumes responsibility to pay that expense;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client;

(e) The Department may not refund spenddown amounts that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce the refund amount by the amount of any unpaid obligation that the client owes the Department.

(10) For poverty-related coverage groups and coverage groups subject to the MAGI-based methodologies, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct medical costs from income to determine eligibility for poverty-related or MAGI-based medical assistance programs. An individual may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related or MAGI-based medical assistance programs.

(11) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(12) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(13) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(14) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(15) For non-institutional Medicaid programs, the eligibility agency may only deduct medically necessary expenses. The Department determines whether services for institutional care are medically necessary.

(16) The eligibility agency may not require a client to pay a spenddown of less than $1.

(17) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-10. Medicaid Work Incentive Program Income Deductions.

(1) To determine eligibility for the MWI program, the eligibility agency shall deduct the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, the eligibility agency shall deduct the balance of the $20 from earned income;

(b) Impairment-related work expenses;

(c) $65 plus one-half of the remaining earned income;

(d) A current year loss from a self-employment business can be deducted only from other earned income.

(2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct health insurance premiums and medical costs from income before comparing

countable income to the applicable limit.

(3) The eligibility agency shall deduct from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

(4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the eligibility agency. The client may not meet the MWI premium with medical expenses.

(5) The eligibility agency may not require a client to pay a MWI buy-in premium of less than $1.

R414-304-11. Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts and incorporates by reference the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the eligibility agency shall deduct from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct health insurance premiums in the month the payment is due. The eligibility agency shall deduct the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(b) The eligibility agency shall deduct from income the portion of a combined premium attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member. The client's portion must be paid from the funds of the institutionalized or waiver-eligible client.

(3) The eligibility agency may only deduct medical expenses from income under the following conditions:

(a) the client receives the medical service;

(b) Medicaid or a third party will not pay the medical bill;

(c) a paid medical bill can only be deducted through the month of payment. No portion of any paid bill can be deducted after the month of payment.

(4) To determine the cost of care contribution for long-term care services, the eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying when the client incurs the expenses for the transfer of assets for less than fair market value. The eligibility agency may not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 1917(f) of the Social Security Act in effect January 1, 2013, when the equity value of the individual's home exceeds the limit set by law. The eligibility agency may not deduct the expenses during or after the month that the client receives the services even when the expenses remain unpaid.

(5) The eligibility agency may not allow a medical expense as an income deduction more than once.

(6) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(7) The eligibility agency may only deduct the amount of prepaid medical expenses that equals the cost of services in a given month. The eligibility agency may not deduct from income any payments that a client makes for medical services in a month before the client receives the services.

(8) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(9) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(10) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(11) The eligibility agency shall require institutionalized clients to pay all countable income remaining after allowable income deductions to the institution in which they reside as their cost of care contribution.

(12) A client who pays a cash spenddown or a cost-of-care amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or cost-of-care paid up to the amount of bills. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The eligibility agency may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown or to reduce his cost-of-care to the institution when the client assumes that payment responsibility;

(d) A refund cannot exceed the actual cash spenddown or cost-of-care amount paid by the client;

(e) The eligibility agency may not refund spenddown or cost-of-care amounts paid by a client based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client

receives during the coverage month. The client may use these unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce a refund by the amount of any unpaid obligation that the client owes the Department.

(13) The eligibility agency shall deduct a personal needs allowance for residents of medical institutions equal to $45.

(14) When a doctor verifies that a single person or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the eligibility agency shall deduct a personal needs allowance equal to the BMS for one person defined in Subsection R414-304-13(6), for up to six months to maintain the individual's community residence.

(15) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) Medical costs that a client incurs in a benefit month may not be used to meet spenddown when the client is enrolled in a Medicaid health plan. Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services that a client receives in a retroactive or application month that a client pays may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services.

R414-304-12. Budgeting.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.640, October 1, 2012 ed., and 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, October 1, 2012 ed., relating to financial responsibility and budgeting for non-MAGI-based Medicaid coverage groups.

(2) The Department adopts and incorporates by reference, 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2012 ed., relating to household income and budgeting for MAGI-based Medicaid coverage groups.

(3) The eligibility agency shall do prospective budgeting to determine a household's expected monthly income.

(a) The eligibility agency shall include in the best estimate of MAGI-based income, reasonably predictable income changes such as seasonal income or contract income to determine the average monthly income expected to be received during the certification period.

(b) The eligibility agency shall prorate income over the eligibility period to determine an average monthly income.

(4) A best estimate of income based on the best available information is considered an accurate reflection of client income in that month.

(5) The eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility. For individuals eligible under a medically needy coverage group, the best estimate of income is used to determine the individual's spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) For non-MAGI-based coverage groups, the eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI, MWI program, and aged, blind, disabled, and Institutional Medicaid income is counted as it is received. Income that is received weekly or every other week is not factored;

(b) For medically needy Family, Pregnant Woman and Child Medicaid programs, income that is received weekly or every other week is factored.

(8) Lump sums are income in the month received. Lump sum payments can be earned or unearned income.

(9) For non-MAGI-based coverage groups, income paid out under a contract is prorated over the time period the income is intended to cover to determine the countable income for each month. The prorated amount is used instead of actual income that a client receives to determine countable income for a month.

(10) To determine the average monthly income for farm and self-employment income, the eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factors in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income is adjusted during the year when information about changes or expected changes is received by the eligibility agency.

(11) Countable educational income that a client receives other than monthly income is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover those specific months in the retroactive period.

R414-304-13. Income Standards.

(1) The Department adopts and incorporates by reference Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall calculate the aged and disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an aged or disabled person's income exceeds this amount, the Basic Maintenance Standard (BMS) applies unless the disabled individual or a disabled aged individual has earned income. In that case, the income standards of the MWI program apply.

(3) The income standard for the MWI for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the BMS applies.

(a) The eligibility agency shall charge a MWI buy-in premium for the MWI program when the countable income of the eligible individual's or the couple's income exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the eligibility agency shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(4) The income limit for parents and caretaker relatives, pregnant women, and children under the age of 19 are defined in Section R414-303-4.

(5) To determine eligibility and the spenddown amount of individuals under medically needy coverage groups, the BMS applies.

(6) The BMS is as follows:

TABLE

Household Size	Basic Maintenance Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-14. Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and Subsections 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall count the following individuals in the BMS for aged, blind and disabled Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for aged, blind and disabled Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals in the household size for the 100% of poverty aged or disabled Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals in the household size for the MWI program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are 18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for aged, blind and disabled non-institutional Medicaid and the spenddown, if any; aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI programs is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on Section R414-304-3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the MWI program is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is included in the BMS, it means that the eligibility agency shall count that family member as part of the household and also count his income and resources to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is included in the household size, it means that the eligibility agency shall count that family member as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income or whether that family member receives medical assistance.

R414-304-15. Medically Needy Family, Pregnant Woman and Child Medicaid Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), October 1, 2012 ed.

(2) If a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the eligibility agency shall include the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers emergency services only under other provisions of Medicaid law.

(3) The eligibility agency may exclude any unemancipated minor child from the Medicaid coverage group, and may exclude an ineligible alien child from the household size at the request of the named relative who is responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size to determine what income limit is applicable to the family. The eligibility agency may not consider income and resources of an excluded child to determine eligibility or spenddown.

(4) The eligibility agency may not include a non-parent caretaker relative in the household size of the minor child.

(5) If anyone in the household is pregnant, the eligibility agency shall include the expected number of unborn children in the household size.

(6) If the parents voluntarily place a child in foster care and in the custody of a state agency, the eligibility agency shall include the parents in the household size.

(7) The eligibility agency may not include parents in the household size who have relinquished their parental rights.

(8) If a court order places a child in the custody of the state and the state temporarily places the child in an institution, the eligibility agency may not include the parents in the household size.

(9) If the eligibility agency includes or counts a person in the household size, that family member is counted as part of the household and his income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level applies to determine eligibility for the client or family.

R414-304-16. Aged, Blind and Disabled Institutional Family Institutional Medicaid Filing Unit.

(1) For aged, blind and disabled institutional Medicaid, the eligibility agency may not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost-of-care.

(2) For family institutional Medicaid programs, the Department adopts and incorporates by reference 45 CFR 206.10(a)(1)(vii), October 1, 2012 ed.

(3) The eligibility agency shall determine eligibility and the contribution to cost of care, which may be referred to as a spenddown, using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. The eligibility agency shall end sponsor deeming when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

KEY: financial disclosures, income, budgeting
October 1, 2014 26-18-3
Notice of Continuation January 23, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. Purpose and Authority.

This rule is established under the authority of Section 26-18-3 and establishes the resource provisions for Medicaid eligibility.

R414-305-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) The following definitions apply in this rule:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers, and the cost of opening and closing a grave site.

(b) "Penalty period" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a home and community-based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

R414-305-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.

(1) To determine resource eligibility of an individual on the basis of being aged, blind or disabled, the Department adopts and incorporates by reference 42 CFR 435.840, 435.845, October 1, 2012 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, April 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(b), (d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency applies the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two-person household.

(4) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(5) The eligibility agency shall base non-institutional and institutional Medicaid eligibility on all available resources owned by the individual, or considered available to the individual from a spouse or parent. The eligibility agency may not grant eligibility based upon the individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, April 1, 2012 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(6) The eligibility agency may not count any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act. Any money from the resource that is given to the child as unearned income is a countable resource that begins the month after the child receives it.

(7) The eligibility agency shall count the resources of a ward that are controlled by a legal guardian as the ward's resources.

(8) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(9) If a resource is available, but a legal impediment exists, the eligibility agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource exists:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt as long as the home is the individual's principal place of residence.

(11) For an institutionalized individual, the eligibility agency may not consider a home or life estate to be an exempt resource.

(12) To determine eligibility for nursing facility or other long-term care services, the eligibility agency shall exclude the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(a) the individual intends to return to the home;

(b) the individual's spouse resides in the home;

(c) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(d) a reliant relative of the individual resides in the home.

(13) Even if the conditions in Subsection R414-305-3(12) are met, an individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds $500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services.

(14) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(15) The eligibility agency may retroactively designate for burial a previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231. The effective date of the exclusion cannot be earlier than the first day of the month after the month in which the funds were designated for burial or intended for burial, were separated from non-burial funds, and the client was eligible for Medicaid. The eligibility agency shall treat the resources as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(16) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(17) The eligibility agency may not count resources of an SSI recipient who has a plan for achieving self-support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self-support goals.

(18) The eligibility agency may not count an irrevocable burial trust as a resource. Nevertheless, if the owner is institutionalized or on home and community-based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(19) The eligibility agency may not count business resources that are required for employment or self-employment.

(20) For the Medicaid Work Incentive Program, the

eligibility agency may not count the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(21) After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the resources described in Subsection R414-305-3(20) to allow the individual to qualify for other Medicaid programs for the aged, blind or disabled, and not solely the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(22) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting assets from a sponsor when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(23) The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(24) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(25) The eligibility agency may not count as a resource, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(26) The eligibility agency may not count certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation; ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(27) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

(28) Under the authority of Subsection 1902(r)(2) of the Social Security Act, to determine an individual's eligibility for Medicaid for long-term care services, the Department disregards otherwise countable assets or resources in an amount equal to the insurance benefit payments made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy that meets the provisions found in 42 U.S.C. 1396p(b)(1)(C)(iii). The amount of the disregard applies to otherwise countable assets the client owns or that are deemed available to the client for the purpose of determining eligibility, and is equal to the amount of benefits the client has received from the partnership policy up through the month immediately before the month of application for long-term care assistance under Utah Medicaid.

(a) This resource disregard applies to aged, blind or disabled individuals who qualify for Medicaid under one of the following eligibility coverage groups found under:

(i) Subsection 1902(a)(10)(A)(ii)(V) of the Social Security Act; or

(ii) Subsection 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

(b) The Department treats payments received after eligibility for long-term care services as a third-party liability that does not result in the disregard of additional resources.

(c) Assets disregarded under Section R414-305-3 are not subject to estate recovery authorized under Section 26-19-13.7, with the exception defined below in Subsection R414-305-3(28)(e).

(d) This disregard is not specific to any one asset. Any countable assets the individual owns or that are deemed available to the client are subject to the provisions defined in Section R414-305-9 regarding transfers of assets. The Department shall apply a penalty period or an overpayment proceeding for any transfer of assets that is less than fair market value. In the event the Department learns of an asset transfer at the time of an estate recovery action for which a penalty period is not assessed or an overpayment is not collected, the Department shall reduce the amount of assets in the estate that could otherwise be excluded from the estate recovery requirements by the value of the assets transferred for less than fair market value. The Department may also take legal steps to recover assets transferred for less than fair market value.

(e) Home equity in excess of the standard described in Subsection R414-305-3(13) is not a countable resource, so this disregard does not affect the application of Subsection R414-305-3(13).

(f) The Department recognizes long-term care insurance partnership policies purchased in other states under the reciprocity requirements of the statute. The beneficiary of the policy must have been a resident in a partnership state when coverage first became effective under the policy.

(29) Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in Subsection R414-305-3(12).

(c) The individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the individual and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the individual's age. The eligibility agency uses this figure to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329

13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-4. Parents and Caretaker Relatives, Pregnant Woman and Child using MAGI methodology Resource Provisions.

The Department adopts 42 CFR 435.603(g), October 1, 2012 ed., which is incorporated by reference, regarding no resource test for coverage groups subject to MAGI-based methodologies for determining eligibility.

R414-305-5. Resource Provisions for Parents and Caretaker Relatives, Pregnant Woman, and Child Under Non-MAGI-Based Community and Institutional Medicaid.

(1) To determine resource eligibility for an individual for Parents and Caretaker Relatives, Pregnant Woman, and Child non-MAGI-based Medicaid programs, the Department adopts and incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), October 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) The medically needy resource limit is $2,000 for a one-person household, $3,000 for a two-person household and $25 for each additional household member.

(4) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(5) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(6) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal or informal.

(7) If a resource is available, but a legal impediment exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(8) The eligibility agency shall exclude a maximum of $1,500 in equity value of one vehicle.

(9) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds $1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household

member needs because of the household member's medical or physical condition.

(10) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(11) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(28) shall apply.

(12) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(13) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13)and (28) shall apply to the individual's home or life estate.

(14) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(15) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(16) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(17) The eligibility agency shall exclude as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(18) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to $1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The client shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest earned on exempt burial funds that is left to accumulate. If an individual uses exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the date that the funds are withdrawn.

(19) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(20) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(21) The eligibility agency may not count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(22) The eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(23) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(24) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(25) The eligibility agency may not count as resources certain property and rights of federally-recognized American Indians including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(26) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

R414-305-6. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396r-5 to determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share.

(2) The resource limit for an institutionalized individual is $2,000.

(3) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-6(4) as of the first continuous period of institutionalization or upon application for Medicaid home and community-based waiver services. The eligibility agency shall notify the requester of the results of the assessment. The agency may not require the individual to apply for Medicaid or pay a fee for the assessment.

(4) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The eligibility agency shall count the resources for the assessment that include those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(a) The community spouse's assessed share of resources is one-half of the total resources. Nevertheless, the protected resource allowance for the community spouse may be less than the assessed share.

(b) Upon application for Medicaid, the eligibility agency

shall set the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The eligibility agency shall set the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions:

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard;

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard;

(iii) The eligibility agency shall use the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the eligibility agency shall apply the income first provisions of 42 U.S.C. 1396r-5(d)(6).

(5) The eligibility agency shall count any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(6) After the eligibility agency establishes eligibility for the institutionalized spouse, the agency shall allow a protected period for the couple to either use excess resources, or change the ownership of resources held jointly or held only in the name of the institutionalized spouse.

(a) The protected period continues until the resources held in the institutionalized spouse's name do not exceed $2,000, or until the time of the next regularly scheduled eligibility redetermination, whichever occurs first.

(b) The institutionalized individual may do the following:

(i) use resources held in his name for his benefit or for the benefit of his spouse;

(ii) transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit; or

(iii) a combination of both.

(7) The eligibility agency may not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the agency establishes eligibility.

(8) If an individual is otherwise eligible for institutional Medicaid, the eligibility agency may not count the community spouse's resources as available to the institutionalized individual due to an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:

(a) The individual assigns support rights to the agency;

(b) The individual cannot get medical care without Medicaid;

(c) The individual is at risk of death or permanent disability without institutional care.

R414-305-7. Treatment of Trusts.

(1) The eligibility agency shall apply the criteria in Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., to determine the availability of trusts established before August 11, 1993.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable or whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(A) concerning trusts for a Disabled Person under Age 65. These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust that complies with the provisions in Subsection R414-305-7(2) and (4) do not count as available resources.

(a) The individual trust beneficiary must meet the disability criteria found in 42 U.S.C. 1382c(a)(3). The trust must be established and assets transferred to the trust before the disabled individual reaches age 65.

(b) The trust must be established solely for the benefit of the disabled individual by a parent, grandparent, legal guardian of the individual, or the court.

(c) The trust may only contain the assets of the disabled individual. The eligibility agency shall treat any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(d) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(e) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(f) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(g) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(h) The eligibility agency shall continue to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the agency shall treat the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

(i) A trust that provides benefits to other persons is not an individual special needs trust and does not the meet the criteria to be excluded from resources.

(j) A corporate trustee may charge a reasonable fee for services.

(k) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(l) Additional trusts cannot be created within the special needs trust.

(3) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(C) concerning pooled trusts for disabled individuals. A pooled trust is a specific trust for disabled individuals that meets all of the following conditions:

(a) The trust contains the assets of disabled individuals;

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents;

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the eligibility agency shall treat the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50% of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-7(2) and (3):

(a) No expenditures may be made after the death of the beneficiary before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust;

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share;

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the eligibility agency;

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual;

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary;

(ii) The eligibility agency shall treat any provision or action that does or will divert payments or principal from the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary;

(e) The eligibility agency shall count cash distributions from the trust as income in the month received;

(f) The eligibility agency shall count retained distributed amounts as resources beginning the month which follows the month that the amounts are distributed. The agency shall apply the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ten days of receipt. The agency shall exclude assets purchased with trust funds if the trust retains ownership;

(g) The eligibility agency shall count distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid;

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition;

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The eligibility agency may require a statement of medical need for the services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the eligibility agency may require verification of the person's ability to carry out the needed services;

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically necessary attendant;

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the eligibility agency upon request or upon any change of

trustee.

(5) The eligibility agency may not count assets held in a pooled trust that comply with the provisions in Subsection R414-305-7(3) and (4) as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community-based services under one of the waiver programs.

R414-305-8. Transfer of Resources for Non-Institutional Medicaid Coverage Groups.

The eligibility agency may not impose a penalty period for the transfer of resources to determine eligibility for individuals who are not institutionalized or eligible for home and community-based services waivers.

R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community Based Services Waivers.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a penalty period applies for a transfer of assets for less than fair market value.

(2) The transfer requirements of 42 U.S.C. 1396p(c) and (e) apply if an individual or the individual's spouse transfers the home or life estate, assets are disregarded for eligibility purposes pursuant to Subsection R414-305-3(28), or for any other asset on or after the look-back date based on an application for long-term care Medicaid services.

(3) If an individual or the individual's spouse transfers assets in more than one month after February 7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the penalty period. The eligibility agency shall apply partial month penalty periods for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(4) In accordance with 42 U.S.C. 1396p(c), the penalty period for a transfer of assets that occurs after February 7, 2006, begins the first day of the month during or after which assets are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise receive institutional level care based on an approved application for Medicaid, but for the application of the penalty period, whichever is later.

(a) If a previous penalty period is in effect on the date that the new penalty period begins, the new penalty period begins immediately after the previous one ends.

(b) The eligibility agency shall apply penalty periods consecutively so that they do not overlap.

(5) If assets are transferred during any penalty period, the penalty period for those transfers does not begin until the previous penalty period expires.

(6) If a transfer occurs, or the eligibility agency discovers an unreported transfer after the agency approves an individual for Medicaid for nursing home or home and community-based services, the penalty period shall begin on the first day of the month after the month that the individual transfers the asset.

(7) The statewide average private-pay rate for nursing home care in Utah that the eligibility agency shall use to calculate the penalty period for transfers is $4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred may only be used to benefit the spouse, disabled child, or disabled individual, and must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in the agreement that benefit another person at any time nullify the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4) that meets the criteria in Section R414-305-7 does not have to meet the actuarially sound test.

(9) The eligibility agency may not impose a penalty period if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the State;

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) When the individual dies, the State shall distribute the benefits of the policy as follows:

(i) The State may distribute up to $7,000 to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the individual cannot exceed $7,000;

(ii) The State may distribute an amount that does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the individual;

(iii) The State may distribute to a remainder beneficiary named by the individual any amount that remains after payments are made as defined in Subsection R414-305-9(9)(d)(i) and Subsection R414-305-9(9)(d)(ii).

(10) If the eligibility agency determines that a penalty period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the Department may not pay the costs for nursing home or other long-term care services during the penalty period. The notice shall include when the penalty period begins and ends.

(a) The individual may request a waiver of the penalty period based on undue hardship.

(b) The individual must send a written request for a waiver of the penalty period due to undue hardship to the eligibility agency within 30 days of the date printed on the penalty period notice.

(c) The request must include an explanation of why the individual believes undue hardship exists.

(d) The eligibility agency shall make a decision on the undue hardship request within 30 days of receipt of the request.

(11) An individual who claims an undue hardship as a result of a penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources may not access the asset immediately; however, the eligibility agency shall require the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource;

(i) The agency may determine that it is unreasonable to require the individual to take action if a knowledgeable source confirms that the individual's efforts cannot succeed;

(ii) The agency may determine that it is unreasonable to require the individual to take action based on evidence that the individual's action is more costly than the value of the resource; and

(b) Application of the penalty period for a transfer of resources deprives the individual of medical care, endangers the individual's life or health, or deprives the individual of food, clothing, shelter, or other necessities of life.

(12) If the eligibility agency waives the penalty period based on undue hardship, the agency shall notify the individual. The Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The eligibility agency shall notify the individual of the date that the individual must provide

verifications of the steps taken. The individual must, within the time frames set by the agency, verify to the agency all reasonable actions. The agency shall review the undue hardship waiver and the actions of the individual to try to regain the transferred assets. The time period for the review may not exceed six months. Upon review, the agency shall decide whether:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the agency shall notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps without success, in which case the agency shall notify the individual that it requires no further action. If the individual continues to meet eligibility criteria, the eligibility agency may not apply the penalty period; or

(c) The individual has not taken all reasonable steps, in which case the eligibility agency shall discontinue the undue hardship waiver. The eligibility agency shall then apply the penalty period and the individual is responsible to repay Medicaid for services and benefits that the individual received during the months that the undue hardship waiver was in place.

(13) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the eligibility agency may determine that the individual cannot recover or regain the transferred resource. If the agency decides that the assets cannot be recovered and that applying the penalty period may result in undue hardship, the agency may not apply a penalty period or shall end a penalty period that has already begun.

(14) The eligibility agency shall base its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The agency shall compare the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide whether the financial situation creates an undue hardship. The agency shall send written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision to file a request for a fair hearing.

(15) The eligibility agency shall consider the portion of an irrevocable burial trust that exceeds $7,000 a transfer of resources. The agency shall deduct the value of any fully paid burial plot from the burial trust first before determining the transferred amount.

R414-305-10. Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, and Qualifying Individual Resource Provisions.

(1) To determine eligibility for Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, and Qualifying Individuals, the eligibility agency shall apply the resource limit defined in 42 U.S.C. Sec.1396d(p)(1)(C).

(2) The eligibility agency shall determine countable resources in accordance with the provisions of Section R414-305-3.

R414-305-11. Treatment of Annuities.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased after February 7, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) apply. The eligibility agency shall treat annuities purchased after February 7, 2006, which do not meet the requirements of 42 U.S.C. 1396p(c), as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-11(4), the eligibility agency shall count annuities in which the individual, the individual's spouse or a minor individual's parent has an interest as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The agency shall presume that a market exists to purchase annuities or the stream of income from annuities, which make them available resources. The individual may rebut the presumption that the annuity may be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annuities or the revenue stream from annuities, in which case, the agency may not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category of Medicaid, the eligibility agency shall exclude an annuity from countable resources in the form of the periodic payment if it meets the following requirements.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes the annuities after February 7, 2006, the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) For family-related medically needy Medicaid programs, the eligibility agency shall count all annuities as resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(6) Annuities purchased on or after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the eligibility agency that the change in beneficiary has been made by the date requested by the agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the eligibility agency shall apply the penalty period. If the eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the penalty period begins the day after the closure date.

(7) The eligibility agency shall treat an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(8) If a penalty period for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the penalty period for a transfer does not end until the individual completes and verifies the change of beneficiary to the eligibility agency. The eligibility agency may not rescind the penalty period.

(9) If the individual or spouse does not provide all information about annuities for which they have an interest by the requested due date, the eligibility agency shall deny the application. The individual may reapply, but may not protect the original application date.

(10) The issuer of the annuity shall inform the eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity shall also inform the agency if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the agency.

KEY: Medicaid, resources
October 1, 2014 26-18-3
Notice of Continuation January 23, 2013 26-1-5

R527. Human Services, Recovery Services.
R527-40. Retained Support.
R527-40-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

(2) The purpose of this rule is to define "retained support" in regards to a child support case, and to provide details as to how the amount owed is calculated once a retained support case has been opened for an obligee who has retained payments that were assigned to the state.

R527-40-2. Retained Support.

(1) The term Retained Support refers to a situation in which an obligee who has assigned support rights to the state has received child support but failed to forward the payment(s) to ORS.

(2) The agent will refer the case to the appropriate child support team with the evidence to support the referral.

(3) In computing the amount owed, the obligee will be given credit for the $50 pass-through payment for any months prior to March, 1997, in which support was retained by the client. For example, if the obligee received and kept a support payment of $200 in February, 1997, the referral will be made as a $150 debt. For support payments retained on or after March 1, 1997, no credit shall be given because there will be no pass-through payments for support payments made after February 28, 1997.

R527-40-3. Recoupment of Public Assistance Overpayments/Retained Support.

(1) Obligor not receiving assistance.

(a) The obligor will be asked to complete an income asset affidavit.

(b) The total liability shall be reviewed with the obligor.

(c) The obligor will be requested to pay the total obligation in full.

(d) If total payment is not possible, the type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances will be reviewed.

(2) Obligor receiving assistance.

(a) Payment may be made by assistance recoupment. The recoupment may be voluntary or may be recouped without consent in accordance with rule or federal regulation.

(b) ORS shall be responsible for reviewing all requests for Food Stamp retroactive benefits to determine if an offset is to be made. A determination of the amount due the recipient shall be made within five (5) days from the date the request is received by ORS.

KEY: child support, public assistance overpayments
August 9, 2010 **62A-1-111**
Notice of Continuation September 3, 2014 **62A-11-107**
62A-11-304.1
62A-11-307.1(3)
62A-11-307.2(3)

R539. Human Services, Services for People with Disabilities.
R539-4. Behavior Interventions.
R539-4-1. Purpose.

(1) The purpose of this rule is to define and establish standards for Behavior Interventions, to protect Persons' rights, and prevent abuse and neglect.

R539-4-2. Authority.

(1) This rule establishes procedures and standards for Persons' constitutional liberty interests as required by Subsection 62A-5-103.

R539-4-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Behavior Intervention" means a specific technique designed to teach the Person skills and address their problems. Techniques are based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(b) "Behavior Peer Review Committee" means a group consisting of at least three specialists with experience in the fields of Positive Behavior Supports and applied behavior analysis. One of the three members must be outside the Provider agency. The Committee is primarily responsible for evaluating the quality, effectiveness, and least intrusiveness of the Person's Behavior Support Plan.

(c) "Behavior Support Plan" means a written document used by Provider staff and others, designed to address the Person's specific problems.

(d) "Contingent Rights Restrictions" means a Level III Intervention resulting in the temporary loss of rights based upon the occurrence of a previously identified problem.

(e) "Emergency Behavior Intervention" means the use of Level II Interventions not outlined in the Behavior Support Plan, but used in Emergency Situations.

(f) "Emergency Rights Restriction" means a Level II Intervention temporarily denying or restricting access to personal property, privacy, or travel in order to prevent imminent injury to the Person, others, or property. Rights are reinstated when immediate danger is resolved.

(g) "Emergency Situations" means one or more of the following:

(i) Danger to others: physical violence toward others with sufficient force to cause bodily harm.

(ii) Danger to self: abuse of self with sufficient force to cause bodily harm.

(iii) Danger to property: physical abuse or destruction of property.

(iv) Threatened abuse toward others, self, or property which, with an evidence of past threats, result in any of the items listed above.

(h) "Enforced Compliance" means a Level II Intervention in which a Person is physically guided through completion of a request or command that the Person is resisting.

(i) "Exclusionary Time-out" means a Level II Intervention removing the Person from a specific setting that exceeds 10 minutes or requires Enforced Compliance to move the Person to or prevent from leaving a designated area.

(j) "Extinction" means a Level I Intervention that withholds reinforcement from a previously reinforced behavior.

(k) "Functional Behavior Assessment" means a written document prepared by the Provider behavior specialist to determine why problems occur and develop effective interventions. The results of the assessment are a clear description of the problem, situations that predict when the problem will occur, consequences that maintain the problem, and a summary statement or hypothesis.

(l) "Highly Noxious Stimuli" means a Level III Intervention applying an extremely undesirable, but not harmful, sensory event that exceeds the criteria of Mildly Noxious Stimuli.

(m) "Level I Intervention" means positive, unregulated procedures such as prevention strategies, reinforcement strategies, positive teaching and training strategies, redirecting, verbal instruction, withholding reinforcement, Extinction, Non-exclusionary Time-out/Contingent Observation, and simple correction.

(n) "Level II Intervention" means intrusive procedures that may be used in pre-approved Behavior Support Plans or as Emergency Behavior Interventions. Approved interventions include Enforced Compliance, Manual Restraint, Exclusionary Time-out, Mildly Noxious Stimuli, and Emergency Rights Restrictions.

(o) "Level III Intervention" means intrusive procedures that are only used in pre-approved Behavior Support Plans. Approved interventions include Time-out rooms, Mechanical Restraint, Highly Noxious Stimuli, overcorrection, Contingent Rights Restrictions, Response Cost, and Satiation.

(p) "Manual Restraint" means a Level II Intervention using physical force in order to hold a Person to prevent or limit movement.

(q) "Mechanical Restraint" means a Level III Intervention that is any device attached or adjacent to the Person's body that cannot easily be removed by the Person and restricts freedom of movement. Mechanical restraint devices may include, but are not limited to, gloves, mittens, helmets, splints, and wrist and ankle restraints. For purposes of this Rule, Mechanical Restraints do not include:

(i) Safety devices used in typical situations such as seatbelts or sporting equipment.

(ii) Medically prescribed equipment used as positioning devices, during medical procedures, to promote healing, or to prevent injury related to a health condition (i.e. helmets used for Persons with severe seizures).

(r) "Mildly Noxious Stimuli" means a Level II Intervention applying a slightly undesirable sensory event such as a verbal startle or loud hand clap.

(s) "Non-exclusionary Time-out/Contingent Observation" means a Level I Intervention in which a Person voluntarily moves to a designated area for less than ten minutes for the purpose of regaining self-control or observing others demonstrating appropriate actions.

(t) "Positive Behavior Supports" means the use of Behavior Interventions that achieve socially important behavior change. The supports address the functionality of the problem and result in outcomes that are acceptable to the Person, the family, and the community. Supports focus on prevention and teaching replacement behavior.

(u) "Overcorrection" means a Level III Intervention requiring a Person to repeatedly restore an environment to its original condition or repeating an alternate behavior.

(v) "Reinforcer" means anything that occurs following a behavior that increases or strengthens that behavior.

(w) "Response Cost" means a Level III Intervention removing previously obtained rewards, such as tokens, points, or activities, upon the occurrence of a problem. Removal of personal property is not approved.

(x) "Satiation" means a Level III Intervention that presents an overabundance of a reinforcer to promote a reduction in the occurrence of the problem. Satiation is not used with Enforced Compliance.

(y) "State Behavior Review Committee" means a group of professionals with training and experience in Positive Behavior Supports and applied behavior analysis. The committee reviews and approves Behavior Support Plans to ensure the least intrusive and most effective interventions are used.

(z) "Time-out Room" means a Level III Intervention

placing a Person in a specifically designed, unlocked room. The Person is prevented from leaving the room until pre-determined time or behavior criteria are met.

R539-4-4. Levels of Behavior Interventions.

(1) The remainder of this rule applies to all Division staff and Providers, but does not apply to employees hired for Self-Administered Services.

(2) All Behavior Support Plans shall be implemented only after the Person or Guardian gives consent and the Behavior Support Plan is approved by the Team.

(3) All Behavior Support Plans shall incorporate Positive Behavior Supports with the least intrusive, effective treatment designed to assist the Person in acquiring and maintaining skills, and preventing problems.

(4) Behavior Support Plans must:

(a) Be based on a Functional Behavior Assessment.

(b) Focus on prevention and teach replacement behaviors.

(c) Include planned responses to problems.

(d) Outline a data collection system for evaluating the effectiveness of the plan.

(5) All Provider staff involved in implementing procedures outlined in the Behavior Support Plan shall be trained and demonstrate competency prior to implementing the plan.

(a) Completion of training shall be documented by the Provider.

(b) The Behavior Support Plan shall be available to all staff involved in implementing or supervising the plan.

(6) Level I interventions may be used informally, in written support strategies, or in Behavior Support Plans without approval.

(7) Behavior Support Plans that only include Level I Interventions do not require approval or review by the Behavior Peer Review Committee or Provider Human Rights Committee.

(8) Level II Interventions may be used in pre-approved Behavior Support Plans or emergency situations.

(9) Level III Interventions may only be used in pre-approved Behavior Support Plans.

(10) Behavior Support Plans that utilize Level II or Level III Interventions shall be implemented only after Positive Behavior Supports, including Level I Interventions, are fully implemented and shown to be ineffective. A rationale on the necessity for the use of intrusive procedures shall be included in the Behavior Support Plan.

(11) Time-out Rooms shall be designed to protect Persons from hazardous conditions, including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets. The rooms shall have adequate lighting and ventilation.

(a) Doors to the Time-out Room may be held shut by Provider staff, but not locked at any time.

(b) Persons shall remain in Time-out Rooms no more than 2 hours per occurrence.

(c) Provider staff shall monitor Persons in a Time-out Room visually and auditorially on a continual basis. Staff shall document ongoing observation of the Person while in the Time-out Room at least every fifteen minutes.

(12) Time-out Rooms shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Persons shall be placed in the Time-out Room immediately following a previously identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for placement in a Time-out Room.

(c) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria.

(13) Mechanical restraints shall ensure the Person's safety in breathing, circulation, and prevent skin irritation.

(a) Persons shall be placed in Mechanical Restraints immediately following the identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for Mechanical Restraints.

(14) Mechanical Restraints shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria. The plan shall also specify maximum time limits for single application and multiple use.

(b) Behavior Support Plans shall include specific requirements for monitoring the Person, before, during, and after application of the restraint to ensure health and safety.

(c) Provider staff shall document their observation of the Person as specified in the Behavior Support Plan.

(15) Manual restraints shall ensure the Person's safety in breathing and circulation. Manual restraint procedures are limited to the Mandt System (Mandt), the Professional Assault Response Training (PART), or Supports Options and Actions for Respect (SOAR) training programs. Procedures not outlined in the programs listed above may only be used if pre-approved by the State Behavior Review Committee.

(16) Behavior Support Plans that include Manual Restraints shall provide information on the method of restraint, release criteria, and time limitations on use.

R539-4-5. Review and Approval Process.

(1) The Behavior Peer Review Committee shall review and approve the Behavior Support Plan annually. The plan may be implemented prior to the Behavior Peer Review Committee's review; however the review and approval must be completed within 60 calendar days of implementation.

(2) The Behavior Peer Review Committee's review and approval process shall include the following:

(a) A confirmation that appropriate Positive Behavior Supports, including Level I Interventions, were fully implemented and revised as needed prior to the implementation of Level II or Level III Interventions.

(b) Ensure the technical adequacy of the Functional Behavior Assessment and Behavior Support Plan based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(c) Ensure plans are in place to attempt reducing the use of intrusive interventions.

(d) Ensure that staff training and plan implementation are adequate.

(3) The Provider Human Rights Committee shall approve Behavior Support Plans with Level II and Level III Interventions annually. Review and approval shall focus on rights issues, including consent and justification for the use of intrusive interventions.

(4) The State Behavior Review Committee must consist of at least three members, including representatives from the Division, Provider, and an independent professional having a recognized expertise in Positive Behavior Supports. The Committee shall review and approve the following:

(a) Behavior Support Plans that include Time-out Rooms, Mechanical Restraints or Highly Noxious Stimuli.

(b) Behavior Support Plans that include forms of Manual Restraint or Exclusionary Time-out used for long-term behavior change and not used in response to an emergency situation.

(c) Behavior Support Plans that include manual restraint not outlined in Mandt, PART, SOAR, Safety Care, or CPI training programs.

(5) The Committee shall determine the time-frame for follow-up review.

(6) Behavior Support Plans shall be submitted to the Division's state office for temporary approval prior to implementation pending the State Behavior Review Committee's review of the plan.

(7) Families participating in Self-Administered Services may seek State Behavior Review Committee recommendations, if desired.

R539-4-6. Emergency Behavior Interventions.

(1) Emergency Behavior Interventions may be necessary to prevent clear and imminent threat of injury or property destruction during emergency situations.

(2) Level I Interventions shall be used first in emergency situations, if possible.

(3) The least intrusive Level II Interventions shall be used in emergency situations. The length of time in which the intervention is implemented shall be limited to the minimum amount of time required to resolve the immediate emergency situation.

(4) Each use of Emergency Behavior Interventions and a complete Emergency Behavior Intervention Review shall be documented by the Provider on Division Form 1-8 and forwarded to the Division, as outlined in the Provider's Service Contract with the Division.

(a) The Emergency Behavior Intervention Review shall be conducted by the Provider supervisor or specialist and staff involved with the Emergency Behavior Intervention. The review shall include the following:

(i) The circumstances leading up to and following the problem.

(ii) If the Emergency Behavior Intervention was justified.

(iii) Recommendations for how to prevent future occurrences, if applicable.

(5) The Person's Support Coordinator shall review Form 1-8 received from Providers and document the follow-up action.

(6) If Emergency Behavior Interventions are used three times, or for a total of 25 minutes, within 30 calendar days, the Team shall meet within ten business days of the date the above criteria are met to review the interventions and determine if:

(a) A Behavior Support Plan is needed;

(b) Level II or III Interventions are required in the Behavior Support Plan;

(c) Technical assistance is needed;

(d) Arrangements should be made with other agencies to prevent or respond to future crisis situations; or

(e) Other solutions can be identified to prevent future use of Emergency Behavior Interventions.

(7) The Provider's Human Rights Committee shall review each use of Emergency Behavior Interventions.

KEY: people with disabilities, behavior
December 30, 2013 62A-5-102
Notice of Continuation September 30, 2014 62A-5-103

R539. Human Services, Services for People with Disabilities.
R539-5. Self-Administered Services.
R539-5-1. Purpose.

(1) The purpose of this rule is to establish procedures and standards for Persons and their families receiving Self-Administered Services.

R539-5-2. Authority.

(1) This rule establishes procedures and standards for Self-Administered Services as required by Subsection 62A-5-103(8).

R539-5-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Direct Services" means services delivered by an employee in the physical presence of the Person.

(b) "Employee" means any individual hired to provide services to a Person receiving Self-Administered Services.

(c) "Fiscal Agent" means an individual or entity contracted by the Division to perform fiscal, legal, and management duties.

(d) "Grant" means a budget allocated by the Division to the Person through which Self-Administered Services are purchased.

(e) "Grant Agreement" means a written agreement between the Person and the Division that outlines requirements the Person must follow while receiving Self-Administered Services.

(f) "Self-Administered Services" means a structure for a Person or Representative to administer Division paid services. This program allows the Person to hire, train, and supervise employees who will provide direct services from selected services as outlined in the current State of Utah Home and Community Based Services Waivers (Medicaid 1915C). Once the Person is allocated a budget, a Grant is issued for the purpose of purchasing specific services. Grant funds are only disbursed to pay for actual services rendered. All payments are made through a Fiscal Agent under contract with the Division. Payments are not issued to the Person, but to and in the name of the Employee.

R539-5-4. Participant Requirements.

(1) In addition to Division Rule, a Person receiving Self-Administered Services must adhere to the terms of their Grant Agreement.

(2) If the Person does not meet the requirements in Rule and the Grant Agreement, the Division may require the Person to use a contracted Provider.

(3) The Person shall ensure that each Employee completes the requirements outlined in R539-5-5.

(4) The Person shall provide the Fiscal Agent with the following documents for each Employee hired to provide services:

(a) Original Form W-4;

(b) Original Form I-9 (including supporting documentation);

(c) Copy of the signed Employment Agreement; and

(d) Original signed Timesheets, verifying the time worked is true and accurate.

(5) The Person or Representative shall complete a Monthly Summary of services for each month in which services are rendered and submit it to the Support Coordinator by the 15th of the month following the month of services.

(a) If the Person does not provide this information to the Division for a three month period, the fourth month's payment shall be withheld until the monthly summaries are submitted.

(b) If the Person submits all required monthly summaries within the fourth month, payment will be reinstated.

(c) If monthly summaries are not provided for the fifth month, then at the sixth month, the Division will require the Person to use a contracted Provider and not participate in Self-Administered Services.

(6) The Division may require the Person to use some form of technical assistance, if needed (i.e. Behaviorist, Accountant, Division Supervisor, etc.). Technical assistance is available to the Person, even if not required by the Division.

(7) The Person's Representative shall notify the Support Coordinator if any of the following occurs:

(a) If the Person moves;

(b) If the Person is in the hospital or nursing home; or

(c) Death of the Person.

R539-5-5. Employee Requirements.

(1) All Employees hired by the Person must be 16 years of age or older. Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.

(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse with the exception that spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to May 17, 2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one spouse dies. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of $15,000 during the State Fiscal year, which begins on July 1st and ends the following year on June 30th.

(3) Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent:

(a) Complete and sign Form W-4;

(b) Complete and sign Form I-9 (including supporting documentation);

(c) Complete and sign the Employee Agreement Form;

(d) Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and

(e) Review the approved and prohibited Behavior Supports as identified in R539-3-10, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, Sections 62A-3-301 through 62A-3-321, and Sections 62A-4a-402 through 62A-4-412 prohibiting abuse.

(f) Review the Person's Support Book.

(g) Complete any screenings and trainings necessary to provide for the health and safety of the Person (i.e., training for any specialized medical needs of the Person).

(h) If applicable, be trained on the Person's Behavior Support Plan.

(i) Complete and sign the Application for Certification Form.

R539-5-6. Incident Reports.

(1) The Person or Representative shall notify the Division by phone, email, or fax of any reportable incident that occurs while the Person is in the care of an Employee, within 24 hours of the occurrence.

(2) Within five business days of the occurrence of an incident, the Person or Representative shall complete a Form 1-8, Incident Report, and file it with the Division.

(3) The following incidents require the filing of a report:

(a) Actual and suspected incidents of abuse, neglect, exploitation, or maltreatment per the DHS/DSPD Code of Conduct and Sections 62-A-3-301 through 321 for adults and Sections 62-4a-401 through 412 for children;

(b) Drug or alcohol abuse;

(c) Medication overdoses or errors reasonably requiring

medical intervention;

(d) Missing Person;

(e) Evidence of seizure in a Person with no seizure diagnosis;

(f) Significant property destruction (Damage totaling $500.00 or more is considered significant);

(g) Physical injury reasonably requiring a medical intervention;

(h) Law enforcement involvement;

(i) Use of mechanical restraints, time-out rooms or highly noxious stimuli that is not outlined in the Behavior Support Plan, as defined in R539-4; or

(j) Any other instances the Person or Representative determines should be reported.

(4) After receiving an incident report, the Support Coordinator shall review the report and determine if further review is warranted.

R539-5-7. Service Delivery Methods.

(1) Persons authorized to receive Self-Administered Services may also receive services through a Provider Agency in order to obtain the array of services that best meet the Person's needs.

R539-5-8. Limitation.

(1) The amount allowed for direct services (all self-administered services are allowed other than Fiscal Management) is limited to no more than $50,000 for each fiscal year. If a Self-Administered Services program exceeds this amount the method of service delivery must change to either a contracted provider service delivery method or a combination of Self-Administered Services and contracted provider service delivery method. If it is determined by the Division that a contracted provider service delivery method is not possible, the Division Director can grant a waiver to the cost limit for a Self-Administered method of service delivery.

KEY: disabilities, self administered services
June 29, 2009 62A-5-102
Notice of Continuation September 30, 2014 62A-5-103

R590. Insurance, Administration.
R590-227. Submission of Annuity Filings.
R590-227-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-227-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.

(2) This rule applies to:

(a) all types of individual and group annuities, and variable annuities; and

(b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-227-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Contract" means the annuity policy including attached endorsements and riders;

(3) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract specifications, contract schedule, policy information, etc.

(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(5) "Electronic Filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.

(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.

(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(9) "Filer" means a person who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a contract;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider; and

(i) an actuarial memorandum, demonstration, and certification.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction to non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

(14) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(15) "Market type" means the type of contract that indicates the targeted market such as individual or group.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(18) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

(19) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity.

(20) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-227-4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) A licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filings may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.

(c) A new filing is required if a filing correction is made more than 15 days after the date original filing was submitted to department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-227-12 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-227-5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Certification.

A. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

B. The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-227 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

C. The "Utah Annuity Filing Certification" must be properly completed, signed, and attached to the Supporting Documentation tab.

D. A filing will be rejected if the certification is false, missing, or incomplete.

E. A false certification may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) has been submitted with the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC Date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum initial premium.

(viii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(f) Annuity Report. All annuity filings must include a sample annuity annual report.

(g) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.

R590-227-6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.

(ii) All John Doe data in the forms including the data page

must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Contract Filing.

(a) Each type of annuity must be filed separately.

(b) A contract filing consists of one contract form, including its related forms, such as an application, data page, rider or endorsement, and actuarial memorandum.

(c) A contract data page must be included with every contract filing.

(d) Only one contract form for a single type of insurance may be filed.

(e) A contract data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing.

(4) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".

(d) The filing must include:

(i) a listing of all base contract form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base contract.

(iii) a sample data page with data for the submitted form.

(e) Unrelated endorsements may not be filed together.

R590-227-7. Additional Procedures for Fixed Annuity Filings.

(1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-93, "Replacement of Life Insurance and Annuities;"

(d) R590-96, "Annuity Mortality Tables;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws. Refer to the following:

(a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting annuity filings the General Information Tab must:

(a) identify the specific subsection of the Utah nonforfeiture law, which applies to the submitted annuity;

(b) describe the basic features of the form submitted;

(c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;

(d) describe the guaranteed and nonguaranteed values including any bonuses;

(e) describe all charges, fees and loads;

(f) list and describe all accounts, options and strategies, if any;

(g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and

(h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.

(4) The contract must be complete with a sample specification page attached.

(5) The actuarial memorandum must:

(a) be currently dated and signed by the actuary;

(b) identify the specific subsections of the Utah nonforfeiture law which applies to the submitted annuity;

(c) describe all contract provisions in detail, including all guaranteed and non-guaranteed elements, that may affect the values;

(d) identify the guaranteed minimum interest crediting rates;

(e) describe in detail the particular methods of crediting interest, including:

(i) guaranteed fixed interest rates; and

(ii) guaranteed interest terms.

(f) specifically identify, describe and list all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

(g) describe in detail all accounts and factors that are used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values required by the law; and

(h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

(6) The actuarial demonstration must:

(a) compare minimum contract values with minimum nonforfeiture values;

(b) be based on representative premium patterns, for flexible premium products use both a single premium and level premium payment, and for both age 35 and age 60 or the highest issue age if lower;

(c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each test must be clearly identified, and include the following:

(i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(7) The actuarial certification of compliance must be currently dated and signed by the actuary. The certification must state that the formulas used and values provided are in compliance with Utah laws and rules.

R590-227-8. Additional Procedures for Group Annuity Filings.

(1) A filer submitting group annuity filings are advised to review the following code sections and rules prior to submitting

a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;" and

(d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A group contract must be included with each certificate filing along with the master application and enrollment form.

(3) Actuarial Memorandum. An actuarial memorandum must be included in all group annuity filing describing the features of the contract and certifying compliance with applicable laws and rules.

(4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-227-9. Additional Procedures for Variable Annuity Filings Procedures.

(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and

(b) R590-133, "Variable Contracts."

(2) A variable annuity contract must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.

(4) The description and the actuarial memorandum must:

(a) describe the type of accounts available in the contract; and

(b) identify those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.

(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.

(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:

(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;

(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:

(i) the guaranteed minimum interest rate; and

(ii) the maximum surrender charges and loads.

(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.

(9) A prospectus is not required to be filed.

R590-227-10. Classification of Documents.

(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:

(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

(b) commercial information and non-individual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Section 63G-2-309(1)(a)(i).

(a) The filer shall request which specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and

(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.

(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.

(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.

(c)(i) Despite the denial of classifying the information as protected, the commissioner shall treat the information as if it had been classified as protected until:

(A) the 30 day time limit for an appeal to the commissioner has expired; or

(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be

a public document.

(ii) During the 30 day time limit to appeal or the appeal process, the filer may withdraw:

(A) the filing; or

(B) the request for designation as protected.

(d) If the filer combines in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

R590-227-11. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) SERFF tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-227-12. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporate all changes; and

(d) for filing submitted in SERFF, attached the documents in Subsections R590-227-11(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued no later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-227-13. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-227-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-227-15. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: annuity insurance filings

April 9, 2014	**31A-2-201**
Notice of Continuation March 18, 2014	**31A-2-201.1**
	31A-2-202

R590. Insurance, Administration.
R590-270. Risk Adjustment Data Submission Requirements.
R590-270-1. Authority.

This rule is promulgated pursuant to Subsections 31A-30-302(3)(a) and (4)(a) wherein the commissioner may adopt a rule to require a carrier to submit data to the All Payer Claims Database (APCD).

R590-270-2. Purpose.

The purpose of this rule is to outline the responsibilities of a carrier with regard to the required data submission to the APCD that is necessary for the evaluation of a state-based risk adjustment program in the individual and small employer health benefit plan markets.

R590-270-3. Applicability and Scope.

(1) This rule applies:

(a) to a carrier that issues a risk adjustment covered plan to a Utah:

(i) resident; or

(ii) domiciled small employer; and

(b) regardless of any limitations or exemptions offered in R428 rules or Section 26-33a-102, based on the number of covered individual Utah residents.

(2) This rule does not apply to a transitional health benefit plan.

R590-270-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 26-33a-102, and R428 rules, the following definitions apply for the purpose of this rule.

(1) "Non-grandfathered health plan" means a health benefit plan issued to an individual or small employer:

(a) after March 23, 2010; or

(b) on or before March 23, 2010 that lost grandfather status at a renewal that occurred after March 23, 2010.

(2) "Risk adjustment covered plan" means a plan as defined by 45 CFR 155.20.

(3) "Subscriber premium" means the monthly premium for the subscriber and associated dependents that correspond to the carrier's rate data template filed with the Utah Insurance Department.

(4) "Transitional plan" means a non-grandfathered health plan issued to an individual or small employer prior to January 1, 2014, that is renewed after January 1, 2014 pursuant to guidance issued by the United States Department of Health and Human Services Office for Consumer Information and Insurance Oversight dated November 14, 2013 and March 5, 2014.

(5) "APCD Carrier" means a carrier that is required to submit data to the APCD based on parameters outlined in R428 rules.

(6) "RA Carrier" means a carrier that is not required to submit data to the APCD based on parameters outlined in R428 rules, but issues risk adjustment covered plans where that plan is subject to risk adjustment in Utah.

R590-270-5. APCD Carrier Data Submission Requirements.

(1) An APCD Carrier shall submit complete and accurate data to the APCD as prescribed by R428 rules.

(2) For any submissions to the APCD on or after January 1, 2015, an APCD Carrier shall include in the medical eligibility file the DSG2.0 Additional Data Elements, which is hereby incorporated by reference and available on the Department's website at insurance.utah.gov.

(a) The DSG2.0 Additional Data Elements shall be inserted into the medical eligibility file after all existing fields, that is, after field ME899.

(b) The DSG2.0 Additional Data Elements may be submitted with null values for records that are not subject to risk adjustment as outlined in 45 CFR Section 156.80.

(3) For any submissions to the APCD on or after January 1, 2015, an APCD Carrier shall submit data to the APCD for non-Utah residents if the individual receives coverage through a risk adjustment covered plan issued to a Utah domiciled small employer group.

(4)(a) An APCD Carrier shall submit the required data to the APCD by the end of the month following the applicable data month.

(b) Notwithstanding any exemption or extension requested under R428 rules, an APCD Carrier must provide to the APCD, in production format by August 31,2014, at least all claims adjudicated on or after January 1, 2014 and ending on or before June 30, 2014.

(5)(a) An APCD Carrier shall submit a one-time supplemental eligibility file to the Office of Health Care Statistics. The supplemental eligibility file shall:

(i) be a supplement to the monthly medical eligibility file;

(ii) be submitted through a secure method agreed upon by OHCS;

(iii) be submitted by November 1, 2014; and

(iv) have a one to one match to records in the most recent available monthly medical eligibility file submitted to the APCD; and

(b) The one-time supplemental eligibility file shall follow:

(i) the record layout in the medical eligibility file in the One-time APCD Supplemental Eligibility File, which is hereby incorporated by reference and available on the Department's website at insurance.utah.gov; or

(ii) an alternative format as approved by the commissioner.

R590-270-6. RA Carrier Data Submission Requirements.

(1) Starting January 1, 2015, a RA Carrier shall submit complete and accurate data to the APCD as prescribed by R428 rules, regardless of any limitations or exemptions offered in R428 rules or Section 26-33a-102 based on the number of covered individual Utah residents.

(2) For any submissions to the APCD on or after January 1, 2015, a RA Carrier shall include the DSG2.0 Additional Data Elements in the medical eligibility file.

(a) The DSG2.0 Additional Data Elements shall be inserted into the medical eligibility file after all existing fields, that is, after field ME899.

(b) The DSG2.0 Additional Data Elements may be submitted with null values for records that are not subject to risk adjustment as outlined in 45 CFR Section 156.80.

(3) For any submissions to the APCD on or after January 1, 2015, a RA Carrier shall submit data to the APCD for non-Utah residents if the covered individual receives coverage through a risk adjustment covered plan issued to a Utah domiciled small employer group.

(4) A RA Carrier shall submit the required data to the APCD by the end of the month following the applicable data month.

(5) The commissioner may approve an alternate submission method if a RA Carrier demonstrates to the satisfaction of the commissioner that the requirements of this rule impose an unreasonable burden to the RA Carrier and would place the RA Carrier in a state of supervision, insolvency, or liquidation.

R590-270-7. Data Use Limitations.

The additional fields required by this rule will be used exclusively for purposes identified in Subsection 26-33a-106.1(1).

R590-270-8. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-270-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-270-10. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, risk adjustment program
September 22, 2014 31A-30-302(3)(a) and (4)(a)

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. An application fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

(5) The established speed limit is 15 miles per hour.

(6) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(7) No campfires or fireworks are allowed.

(8) The use and operation of motor vehicles on sovereign land at Bear Lake shall be governed by Utah Code 65A-3-1 and the Bear Lake CMP.

(9) Pursuant to 65A-2-6(2), to obtain a permit to launch or retrieve a vessel in an area adjacent to the landowner's property at Bear Lake, the adjacent landowner shall:

(a) provide proof of being an adjacent landowner as defined in 65A-2-6(1).

(b) complete the online Mussel-Aware Boater Program and receive a Decontamination Certification Form valid through the end of the calendar year as required and provided by the Utah Division of Wildlife Resources as part of the Aquatic Invasive Species Program.

(10) Each adjacent landowner surrounding Bear Lake may only be issued two(2) beach launching permits annually. They will not be replaced if lost or stolen.

(a) The permit is valid for the calendar year within which the permit is issued.

(b) the permit is for the sole purpose of launching or retrieving a water vessel.

(c) the permit does not authorize parking or operating a motor vehicle in an area designated as closed in the Bear Lake Comprehensive Management Plan in violation of 65A-3-1(3).

(11) the division may enter into an agreement with a local governmental entity or state agency to issue the beach launching permits to adjacent landowners in compliance with the requirements listed above.

(a) the agreement will allow the entity or agency to establish a minimal fee not to exceed $25 for issuing the beach launching permit.

(12) The division or the entity or agency with an agreement to issue the beach launching permit may revoke or deny an adjacent landowner a permit to launch under the following circumstances:

(a) the adjacent landowner fails to comply with the beach launching permit requirements and stipulations listed above (R652-70-2300(9)(a-b) and R652-70-2300(10)(a-c))

(b) the adjacent landowner fails to acquire a lease or permit for structures placed on sovereign lands that may include but not limited to buoys, piers, docks (with the associated anchors/weights) or boat ramps as required in R652-70-300.

(13) Persons found in violation of 65A-3-1(1) and 65A-3-1(2) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

R652-70-2400. Recreational Use of Navigable Rivers.

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

KEY: sovereign lands, permits, administrative procedures
September 23, 2014 65A-10-1
Notice of Continuation April 2, 2012

R671. Pardons (Board of), Administration.
R671-102. Americans with Disabilities Act Complaint Procedures.
R671-102-1. Authority and Purpose.

(1) This rule is made under authority of Utah Code Ann. Subsection 63G-3-201(3). The Board of Pardons and Parole (Board) adopts, defines, and publishes within this rule the grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Board because of a disability.

R671-102-2. Definitions.

(1) "ADA Coordinator" means the Board's Administrative Coordinator, assigned by the Board's Chairperson to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may also be a representative of the Department of Human Resource Management assigned to the Board.

(2) "Board" means the Board of Pardons and Parole created by Utah Const. Art. 7, Section 12(1), and Utah Code Ann. Section 77-27-2(1).

(3) "Chairperson" as provided in Utah Code Ann. Subsection 77-27-4(1), means the Board's Chairperson.

(4) "Designee" means an individual appointed by the Board's Chairperson, or the Board's Vice-Chairperson, to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Board; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Board. A "qualified individual" is also one who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(8) "Vice-Chairperson," as provided in Utah Code Ann. Subsection 77-27-4(2), means the Board's Vice-Chairperson.

R671-102-3. Filing of Complaints.

(1) Any qualified individual may file a complaint alleging non-compliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Board's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Board's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged non-compliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Board's Chairperson has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged non-compliance.

(4) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the person(s) allegedly aggrieved by the reported discrimination.

(6) If the complaint is not in writing, the ADA Coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By filing a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review of all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code Ann. Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 2112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R671-102-4. Investigation of Complaints.

(1) The ADA Coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsections R671-102-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA Coordinator or designee may seek assistance from the Attorney General's staff, and the Board's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA Coordinator or designee may also consult with the Vice-Chairperson in making a recommendation.

(3) The ADA Coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

R671-102-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA Coordinator or designee shall recommend to the Board's Vice-Chairperson what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA Coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing or in another accessible

format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The Board's Vice-Chairperson may confer with the ADA Coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The Board's Vice-Chairperson shall render a decision within 15 working days after the Board's Vice- Chairperson's receipt of the recommendation from the ADA Coordinator or designee. The Board's Vice-Chairperson shall take all reasonable steps to implement the decision. The Board's Vice-Chairperson's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R671-102-6. Appeals.

(1) The complainant may appeal the Board's Vice-Chairperson's decision to the Board's Chairperson within ten working days after the complainant's receipt of the Vice Chairperson's decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The Board's Chairperson may name a designee to assist on the appeal. The ADA coordinator or his designee may not also be the Board's Chairperson's designee for the appeal.

(4) In the appeal, the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The Board's Chairperson or his designee shall review the ADA Coordinator's or his designee's recommendation, the Board's Vice-Chairperson's decision, and the points raised on appeal prior to reaching a decision. The Board's Chairperson may direct additional investigation as necessary. The Board's Chairperson shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The Board's Chairperson shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the Board's Chairperson is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R671-102-7. Record Classification.

(1) Records created in administering this rule are classified as "protected" under Utah Code Ann. Subsections 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R671-102-5, or a final decision upon appeal under Section R671-102-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Utah Code Ann. Subsection 63G-2-302(1)(b), or "controlled" under Utah Code Ann. Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the Board's Vice-Chairperson or the Board's Chairperson shall be classified as "public," and all other records, except controlled records under Subsection R671-102-7(2), classified as "private."

R671-102-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Utah Code Ann. Section 34A-5-107 and Utah Code Ann. Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: disabilities
May 8, 2014 67-19-32
Notice of Continuation September 22, 2014 63G-2

R671. Pardons (Board of), Administration.
R671-103. Attorneys.
R671-103-1. Attorneys.

(1) Only attorneys licensed to practice law in the State of Utah may appear and represent an inmate, offender, or petitioner before the Board.

(2) A person may not act as an attorney or represent any inmate, offender, or petitioner before the Board if:

(a) the person has been prohibited from doing so by Board order entered pursuant to the Board's inherent powers or this rule; or

(b) the person is disbarred or suspended from the practice of law in Utah or any other jurisdiction.

(3) An attorney may not represent anyone in connection with a matter in which the attorney participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person, or as an arbitrator, mediator or other third party neutral unless all parties to the matter give informed consent.

(4) An attorney who has formally served as a public officer or employee of the government shall not otherwise represent a client in connection with a matter in which the attorney participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

R671-103-2. Prohibiting Attorney Appearance and Representation.

(1) The Board may prohibit any attorney from representing any offender before the Board if the Board determines that the attorney:

(a) has violated any federal, state or local law or ordinance;

(b) is disbarred or suspended in Utah or any other jurisdiction;

(c) is not currently licensed by, or is not in good standing with, the Utah State Bar;

(d) has violated any rule or regulation of the Department of Corrections regarding facility integrity or security;

(e) has violated any of the Rules of Professional Responsibility as promulgated by the Utah Supreme Court; or

(f) has violated any of the Board's Administrative Rules.

KEY: parole, inmates, attorneys
September 29, 2014 77-27-5
Notice of Continuation September 22, 2014 77-27-9
78A-9-103

R671. Pardons (Board of), Administration.
R671-201. Original Parole Grant Hearing Schedule and Notice.
R671-201-1. Schedule and Notice.

(1) Within six months of an offender's commitment to prison the Board shall give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of 7 days prior notice should be given regarding the specific day and approximate time of such hearing.

(2)(a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, or any attempt, conspiracy or solicitation to commit any of these offenses.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3)(a) All homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing. In setting an original hearing for a homicide offense commitment, the Board shall only consider information available to the court or offender at the time of sentencing.

(b) Homicide offense commitments not eligible for parole (including sentences of life without parole or death) shall not be scheduled for original hearings.

(4) When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for first degree felony commitments when the most severe sentence imposed and being served is a sentence greater than 15 years to life, excluding enhancements.

(b) After the service of seven years for first degree felony commitments when the most severe sentence imposed and being served is a sentence of 10 years to life, or 15 years to life, excluding enhancements.

(c) After the service of three years for all other first degree felony commitments.

(d) After the service of eighteen months if the most serious offense of incarceration is a second degree felony sexual offense commitment.

(e) After the service of six months for all other second degree felony commitments.

(f) After the service of twelve months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for all other third degree felony and class A misdemeanor commitments.

(5)(a) An offender may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule. An offender's request shall specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion.

(b) The Board may, in its discretion, depart from the schedule as provided by this rule based upon an offender's request due to extraordinary circumstances, when an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled, or upon its own motion.

KEY: parole, inmates, hearings

May 8, 2014 **77-27-7**
Notice of Continuation September 22, 2014

R671. Pardons (Board of), Administration.
R671-309. Impartial Hearings.
R671-309-1. Ex Parte Communications.

(1) Offenders are entitled to an impartial hearing before the Board. The Board therefore discourages any ex parte contact with:

(a) individual Board Members at any time; or

(b) hearing Officers once the Hearing Officer has been assigned to conduct a hearing for a specific offender.

(2) All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to a staff member designated by the Board who is not currently directly involved in hearing the case.

(a) If information provided by any person outside of a hearing could materially affect the Board's decision, the designated staff member shall prepare a memorandum for the file containing the substance of the contact.

(b) If the contact is by a victim wishing to make a statement for the Board's consideration, Rule 671-203 on Victim Input and Notification shall apply.

(c) Any inquiries or input from attorneys, public officials, or members of the public, regarding case facts or substantive matters, shall be submitted in writing. Unwritten inquiries shall be documented and responded to in writing.

(3)(a) A Board Member or Hearing Officer assigned to a case may not initiate, permit, or consider ex parte communications concerning the substance of a pending matter.
(b) A Board Member may not permit, consider, or be a party to any ex parte communication regarding a specific offender under Board jurisdiction if the object, intent, or substance of the communication is, or reasonably could be perceived to be, an attempt to impart information or opinion not contained in the offender's file, or to otherwise influence, change, or modify a Board decision or a Board Member's deliberations, decision, or vote.

(c) In situations where such ex parte communication does occur, the Board member or Hearing Officer shall immediately take steps to terminate the communication, and shall thereafter reduce the substance of the communication to a written memorandum for the Board file, including copies of any writings that formed any part of the ex parte communication. Such memorandum shall thereafter be disclosed to the offender.

(4) This rule may not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of the Board or any Board Member on any particular case or hearing.

(5) Attorneys may submit information for the Board to consider. The information shall be submitted in writing and directed to the Administrative Coordinator or designee.

R671-309-2. Recusal.

A Board Member or other hearing official or officer shall recuse themselves in a proceeding in which the official's impartiality might reasonably be questioned. However, a potentially disqualified or recused hearing official may disclose the basis of the potential recusal to the offender, who, after disclosure, may waive disqualification or recusal. If the offender waives the recusal or disqualification and agrees that the hearing official need not be disqualified, the hearing official may conduct the proceeding. The offender's waiver shall be entered on the record and memorialized in the case file.

KEY: parole, inmates
September 29, 2014 **63G-3-201(3)**
Notice of Continuation January 31, 2012 **77-27-1 et seq**
77-27-5
77-27-7
77-27-9(4)(a)

R704. Public Safety, Emergency Management.
R704-1. Search and Rescue Financial Assistance Program.
R704-1-1. Purpose.

The purpose of this rule is to set forth the procedures for obtaining reimbursement from the program for costs and expenses related to SAR activities in accordance with Title 53, Chapter 2, Part 11.

R704-1-2. Authority.

This rule is authorized by Section 53-2a-1102 which requires the division, with the approval of the board, to make rules for the administration of the program.

R704-1-3. Definitions.

(1) Terms used in this rule include those found in Section 53-2a-1102.

(2) In addition:

(a) "board" means the Search and Rescue Advisory Board created in Section 53-2a-1103;

(b) "division" means the Utah Department of Public Safety, Division of Emergency Management created in Section 53-2a-103;

(c) "eligible expense" means the costs and expenses related to SAR activities that the board has determined are reimbursable expenses under Subsection 53-2a-1102(1) and are eligible for reimbursement from the program;

(d) "equipment" means items used by SAR personnel while conducting SAR activities;

(e) "maintenance" means materials and services that keeps equipment functional and continue its service life;

(f) "program" means the Search and Rescue Financial Assistance Program;

(g) "SAR" means search and rescue;

(h) "SAR activity" means all activities related to search and rescue including SAR training, the purchase or upgrade of SAR equipment, and the deployment to a SAR incident;

(i) "SAR incident" means an incident, not associated with criminal or law enforcement activity, for which a search and rescue team are deployed to search for and rescue victims;

(j) "training" means instruction that teaches or enhances skills directly related to SAR; and

(k) "upgrade" means materials and services that enhance the function of equipment.

R704-1-4. Application Process.

(1) A county seeking reimbursement for SAR costs and expenses paid by it for search and rescue activities shall submit a separate application packet for each SAR activity to the division.

(2) The application packet shall be submitted within 45 days from the date of a SAR activity in order to be considered timely.

(a) If the SAR activity occurred within 45 days prior to July 1st and the county anticipates that it will submit the application packet after July 1st, then the county shall submit a Notice to Seek Reimbursement form as soon as possible after the SAR activity.

(3) The application packet shall include:

(a) a completed Utah Search and Rescue Financial Assistance Application Form provided by the division; and

(b) documentation showing the costs and expenses paid by the county, including copies of invoices, checks, and receipts.

(i) If a county is unable to obtain a receipt or invoice within the 45 day application packet due date, then that period may be extended an additional 45 days. The county shall provide written notification in the application packet that it has been unable to obtain the receipt or invoice.

(4) The county sheriff shall sign the application with an original signature. A designee may sign the application in place of the sheriff in extenuating circumstances that shall be documented to the division.

R704-1-5. Review Process.

(1) The board shall meet as required in Section 53-2a-1104 to review the application packets which have been received by the division and determine whether the costs and expenses sought are eligible for reimbursement from the program.

(2) When making this determination, the board shall consider whether the costs and expenses sought are:

(a) reasonable in light of the type of services or equipment provided;

(b) reasonable in light of the market value for the services or equipment provided;

(c) excludable as salary or overtime pay;

(d) necessary or appropriate for conducting the type of SAR activity for which reimbursement is sought;

(e) reasonably related to or caused by the utilization of the subject equipment in SAR activities;

(f) an unjust or improper enrichment of the owner of the subject equipment; and

(g) incidental to SAR activities:

(i) food is an eligible expense if used exclusively for SAR activities. If food is used for a specific SAR activity, it shall be considered an expense related to the activity. If food is purchased to restock supplies, it shall be considered an equipment purchase;

(ii) clothing is an eligible expense if it marks and readily identifies the wearer as SAR personnel or is an outer garment that serves a specialized function;

(iii) fuel is an eligible expense if used exclusively for SAR activities;

(iv) mileage is an eligible expense in place of fuel reimbursement if the miles driven were exclusively for a SAR activity. The county shall provide documentation that justifies the mileage reimbursement requested;

(v) membership fees to SAR-related organizations is not an eligible expense; and

(vi) equipment maintenance is not an eligible expense.

R704-1-6. Distribution Process.

(1) After the conclusion of the fiscal year, the board shall meet to consider the following information for the prior fiscal year:

(a) the total amount of money available in the program;

(b) each county's eligible expenses;

(c) the total number of SAR incidents which occurred per each county population, described in the form of a ratio;

(d) the number of victims residing outside of each county, described in the form of a percentage;

(e) the number of volunteer hours spent in each county in emergency response and SAR activities per county population, described in the form of a ratio; and

(f) which applications were received in a timely manner.

(2) The following formula shall be applied to the eligible expenses to determine a fair and equitable distribution of money from the program:

(a) if the total amount of eligible expenses is less than the amount of money available in the program, all of the eligible expenses shall be reimbursed from the program; and

(b) if the total amount of eligible expenses is more than the amount of money available in the program, the eligible expenses shall be divided into the following categories and be reimbursed in the order in which they appear:

(i) costs and expenses related to SAR incidents;

(ii) SAR-related training; and

(iii) the purchase or upgrade of SAR equipment.

(3) If there is an insufficient amount of money available in

the program to cover the eligible expenses in any one of the listed categories, the amount of money remaining in the program shall be divided by the total number of counties.

(4) A county may receive a percentage of the money that is allocated to each county as determined by calculating a percentage from the following point totals:

(a) each county shall receive up to 25 points for the timely submission of application packets, with one point to be deducted for each late application;

(b) each county may receive up to 25 points, based on the number of SAR incidents occurring per county population as determined by the following ratios:

(i) 5 points if the ratio is less than 1:750;

(ii) 10 points if the ratio is equal to or greater than 1:750 but less than 1:500;

(iii) 15 points if the ratio is equal to or greater than 1:500 but less than 1:250;

(iv) 20 points if the ratio is equal to or greater than 1:250 but less than 1:100; and

(v) 25 points if the ratio is equal to or greater than 1:100;

(c) each county may receive up to 25 points based on the percentage of victims residing outside of the subject county as determined by the following percentages:

(i) 5 points if the percentage is less than 20%;

(ii) 10 points if the percentage is 20% or greater but less than 40%;

(iii) 15 points if the percentage is 40% or greater but less than 60%;

(iv) 20 points if the percentage is 60% or greater but less than 80%; and

(v) 25 points if the percentage is 80% or greater; and

(d) each county may receive up to 25 points based on the number of volunteer hours spent in each county in emergency response and SAR activities per county population as determined by the following ratios:

(i) 5 points if the ratio is greater than 1:100 but less than 1:50;

(ii) 10 points if the ratio is equal to or greater than 1:50 but less than 1:25;

(iii) 15 points if the ratio is equal to or greater than 1:25 but less than 1:10;

(iv) 20 points if the ratio is equal to or greater than 1:10 but less than 1:5; and

(v) 25 points if the ratio is equal to or greater than 1:5.

(5) The formula in this rule shall be applied to each of the categories until the amount of money left in the program makes it impractical to continue.

(6) The remaining money in the program shall be used to:

(a) cover the board's costs and expenses; and

(b) reimburse eligible expenses in the next fiscal year.

KEY: search and rescue, financial reimbursement, expenses
September 29, 2014 53-2a-1102
Notice of Continuation July 7, 2014

R704. Public Safety, Emergency Management.
R704-2. Statewide Mutual Aid Act Activation.
R704-2-1. Purpose.

The purpose of this rule is to provide procedures for jurisdictions activating the Statewide Mutual Aid Act (SMAA) and for persons acting as agents of the state to use in mobilizing or demobilizing available assets in response to an intrastate or interstate disaster as provided in Title 53, Chapter 2, Part 2, Emergency Management Assistance Compact.

R704-2-2. Authority.

This rule is authorized by Section 53-2a-302.

R704-2-3. Definitions.

(1) Terms used in this rule are defined in Section 53-2a-302.

(2) In addition to the terms defined in Section 53-2a-302:

(a) "agent of the state" means any person designated to represent the state;

(b) "authorized representative" means an officer or employee from a participating jurisdiction empowered to request, offer, or provide assistance on behalf of the chief executive officer;

(c) "committee" means the Statewide Mutual Aid Committee;

(d) "division" means the Utah Division of Emergency Management;

(e) "EMAC" means Emergency Management Assistance Compact, Utah Code Ann. 53-2a-402;

(f) "EMAC coordinator" means a designated division representative functioning as the coordinator of all Emergency Management Assistance Compact activities and actions between the states;

(g) "emergency manager" means a person designated by a jurisdiction to oversee preparedness, emergency or disaster response, mitigation, and recovery for its community;

(h) "Form 101," SMAA Mission Request Form, is a required document used to request resources;

(i) "Form 102A," Agent of the State of Utah - EMAC Agreement, is a required document that outlines liability, benefits, and financial responsibilities when deploying resources to another state;

(j) "Form 102B," Agent of the State of Utah - SMAA Agreement, is a required document that outlines liability, benefits, and financial responsibilities associated with serving as an agent of the state;

(k) "Form 103," SMAA Pre-deployment Checklist for Personnel, is an optional document that lists preparation steps for deployment;

(l) "Form 104," SMAA Mobilization Sheet, is an optional document that outlines the steps and processes involved with deployment;

(m) "Form 105," SMAA Personnel Location, is an optional tracking tool for deployed personnel who are serving an SMAA mission assignment;

(n) "Form 106," SMAA Resource Availability Log, is an optional log that identifies available resources offered by supporting agencies in response to an event;

(o) "Form 107," SMAA Resource Tracking Form, is an optional tracking tool for resources being utilized under an SMAA mission;

(p) "Form 108," SMAA Personnel Demobilization Schedule, is a required tracking tool for personnel being released from their assigned mission duties;

(q) "Form 109," SMAA Demobilization/Return of Assets Guidelines, provides guidelines for the responding jurisdictions to use when tracking assets used in an incident or event;

(r) "Form 110," SMAA Intergovernmental Reimbursement Form, is a required form that a jurisdiction uses to request reimbursement from the requesting jurisdiction;

(s) "Form 111," SMAA After Action/Corrective Action Report Survey, is a form that summarizes and analyzes performance in both exercise and actual events for those who act as an agent of the state. It may also evaluate achievement of the selected exercise objectives and demonstration of the overall capabilities being exercised;

(t) "Form 112," SMAA Demobilization Checklist, is an optional document that outlines the steps to follow in preparing to depart;

(u) "Form 113," SMAA Activation Agreement, is a required document that shows a jurisdiction's intent to activate the SMAA;

(v) "Form 114," SMAA Checklist for Requesting Reimbursement, is a list of the required steps to request reimbursement after the mission is complete;

(w) "Form 115," SMAA Required Forms and Optional Forms, is a list of forms that are required and forms that are only recommended for use;

(x) "Form 116," SMAA Timeline for Reimbursement, is a document that displays each step of the reimbursement process;

(y) "ICS Form 209," Incident Status Summary, is a form used for reporting information on significant incidents that requires inter-agency or intra-agency resource coordination;

(z) "ICS Form 221," Demobilization Checklist, is a FEMA form for tracking resources as they are released from deployment and return to their responding jurisdiction;

(aa) "jurisdiction" means a participating political subdivision as defined in subsection 53-2a-302(2);

(bb) "local to local" means assistance between jurisdictions that do not utilize coordination from the state;

(cc) "mission number" means an assigned number that identifies a mission;

(dd) "SMAA" means Statewide Mutual Aid Act, Utah Code Ann. 53-2a-301 through 310;

(ee) "SMAA coordinator" means a designated division representative functioning as the coordinator of Statewide Mutual Aid Act activities and actions between the participating jurisdictions when requesting assistance of the State;

(ff) "state EOC" means the State of Utah Emergency Operations Center facility operated by the division which assists state agencies and jurisdictions in coordinating information and resources when local emergency response and recovery resources require supplementation; and

(gg) "state EOC manager" means a person designated to manage the State Emergency Operation Center.

R704-2-4. Requests for Disaster Assistance in a State of Emergency.

(1) When seeking to utilize the statewide mutual aid system for an emergency or disaster event, the chief executive officer or emergency manager of the requesting jurisdiction shall contact the division director or deputy director after they have made a written or oral declaration of emergency pursuant to Sections 53-2a-206 or 53-2a-208.

(a) The chief executive officer or designee of the requesting jurisdiction shall submit Form 101 to the responding jurisdiction within 24 hours of seeking assistance from the system for state resources or to receive assistance coordinating local to local assistance.

(2) Upon request by the requesting jurisdiction for state assistance, the SMAA coordinator or state EOC manager shall coordinate services and resources for the emergency or disaster event and shall:

(a) assign a mission number;

(b) post information on WebEOC; and

(c) seek needed equipment and personnel from a participating jurisdiction.

(3) Once a responding jurisdiction that is available to render aid has been identified, the participating jurisdictions shall complete and sign Form 113.

(a) In urgent circumstances, the requesting jurisdiction and the responding jurisdiction may initially enter into a verbal agreement, but the agreement shall be memorialized in writing and signed by both jurisdictions no later than 48 hours after the verbal agreement.

(b) If unanticipated circumstances arise during the emergency or disaster event, the requesting and responding jurisdictions may amend or supplement Form 101.

(c) Any amendments or supplements to Form 101 shall be acknowledged by the participating jurisdictions with authorizing signatures.

R704-2-5. Agent of the State.

(1) At the request of the division, a jurisdiction may agree to provide an employee with the skills and expertise desired to be deployed as an agent of the state for the purpose of rendering intrastate or interstate aid.

(a) The governing authority of the employee serving as an agent of the state shall submit to the division either Form 102A or Form 102B in response to an intrastate or interstate emergency or disaster.

(b) The responding jurisdiction's employee shall remain an employee of the responding jurisdiction except that the supervision of his or her duties during the period of assignment may be governed by agreement between the responding jurisdiction and the requesting jurisdiction and shall be entitled to the same salary and benefits to which they would otherwise be entitled to from the responding jurisdiction.

(c) The division assumes no responsibility for the responding jurisdiction's employee other than the coordination of their travel arrangements and lodging and per diem expenses, expect in exigent circumstances.

(d) Upon completion of a mission, the agent of the state shall submit Form 110 to the division. The division shall then reimburse the responding jurisdiction for the eligible expenses stated in subsection (c) incurred by the agent of the state.

R704-2-6. Procedures for Providing Mutual Aid.

(1) When providing assistance pursuant to the SMAA, the requesting jurisdiction shall control and supervise the personnel, equipment, and resources of any responding jurisdiction.

(a) The requesting jurisdiction shall advise supervisory personnel of the responding jurisdiction concerning assignments or mission tasks.

(b) While providing mutual aid, the incident commander or requesting jurisdiction shall:

(i) maintain daily personnel time records, material records, and a log of equipment hours;

(ii) oversee the operation, control, and maintenance of the equipment and other resources furnished by the responding jurisdiction; and

(iii) report work progress to the responding jurisdiction.

(c) The responding jurisdiction shall notify the requesting jurisdiction if the requested resources are donated or loaned.

(d) The responding jurisdiction may recall its personnel subject to providing a minimum of 24 hours advance notice of intent to withdraw personnel or resources from the requesting jurisdiction, unless circumstances make 24 hours advance notice impracticable or unreasonable.

(2) The responding jurisdiction may release personnel or resources for SMAA assistance after it has determined that its remaining resources are adequate to support its own normal operations.

(a) The requesting jurisdiction shall be responsible for providing food and housing for the personnel from the responding jurisdiction, beginning with the time of arrival at the designated location and until departure, unless otherwise indicated in Form 101.

(b) The requesting jurisdiction may request personnel who are self-sustaining, but must specify what resources it is able to provide to the responding jurisdiction.

(3) The requesting jurisdiction is responsible for coordinating communication between its own personnel and the personnel of the responding jurisdiction.

(a) The responding jurisdiction shall furnish equipment to communicate among its respective operating units.

(4) Each participating jurisdiction shall maintain its own equipment in safe and operational condition.

(5) The division shall receive and maintain an inventory of the state and local services, equipment, supplies, personnel, and other resources related to participation in the SMAA.

R704-2-7. Pre-Mobilization of Resources.

(1) The requesting jurisdiction shall submit Form 101 to the responding jurisdiction to be kept as documentation. The required information includes:

(a) type of resources requested; and

(b) quantity of resources requested.

(2) The responding jurisdiction shall confirm the following incident information:

(a) name of incident;

(b) location of incident;

(c) date and time the incident was declared; and

(d) current time of deployment of resources requested.

(3) The SMAA coordinator or EOC manager shall provide the following to a responding employee acting as an agent of the state:

(a) situation briefing;

(b) pre-deployment checklist; and

(c) travel information.

(4) A requesting jurisdiction shall first use local agency resources prior to requesting resources through SMAA.

(5) The requesting jurisdiction shall specify a location for a staging area and assign a person to ensure the resources are ready to be released.

(a) If the requested resources are for equipment, the responding jurisdiction shall confirm its readiness to be deployed.

(6) The responding jurisdiction shall perform a communications check with all assigned communications equipment, prior to departure, to ensure compatibility with the requesting jurisdiction.

R704-2-8. Mobilization of Resources.

(1) Deployed personnel and resources from a responding jurisdiction shall notify the point of contact for both the requesting jurisdiction and the responding jurisdiction of their arrival at the point of assignment or staging area.

(2) The requesting jurisdiction shall notify the responding jurisdiction if there is a change in assignments or locations for the requested resources.

(3) The division shall use Form 104 for each deployment of resources if state assistance was requested.

(4) Deployed personnel may be tracked by using Form 105.

(a) Deployed resources and available resources may also be tracked for the SMAA through Forms 106 and 107.

(5) The requesting jurisdiction shall provide a mission briefing to the deployed personnel from the responding jurisdiction.

R704-2-9. Demobilization of Resources.

(1) The requesting jurisdiction will be responsible for demobilization.

(a) After termination of the mission time, the requesting

jurisdiction shall release resources and return those resources to the responding jurisdiction according to the terms of Form 104, unless the circumstances of the incident make compliance with the terms impracticable or impossible.

(b) The requesting jurisdiction shall debrief all personnel assigned to the incident prior to departure. The debriefing shall include:

(i) confirmation of personnel's travel arrangements; and

(ii) review of personnel's responsibilities for demobilization.

(2) Equipment issued to personnel from a responding jurisdiction shall be returned, and all documentation shall be completed and submitted as required in Form 109.

(3) Personnel from the responding jurisdiction shall notify the requesting jurisdiction of the safe arrival of the deployed resources upon returning to their home jurisdiction.

(4) The responding jurisdiction's returning personnel shall complete and submit Form 111 to the division for all SMAA deployments if acting as an agent of the state.

R704-2-10. Reimbursement Procedures for Rendering Mutual Aid.

(1) A responding jurisdiction that seeks reimbursement shall provide notice to the requesting jurisdiction within 30 days of the termination of statewide mutual aid assistance.

(a) The notice of intent should include the following:

(i) Form 110;

(ii) a brief summary of the services provided by the responding jurisdiction; and

(iii) contact information for the designated person or financial representative responsible for the request.

(b) The responding jurisdiction shall reference the assigned mission number when seeking reimbursement from a requesting jurisdiction.

(c) In addition to the notice of intent to seek reimbursement, the responding jurisdiction shall provide the requesting jurisdiction and the SMAA coordinator, if the state was involved, with a copy of all documents related to deployment and reimbursement, including:

(i) Form 101 and any amendments or supplements;

(ii) the requesting jurisdiction's acknowledgement of the responding jurisdiction's notice of intent to seek reimbursement using Form 113;

(iii) any notices of dispute; and

(iv) any payments made by the requesting jurisdiction in response to the responding jurisdiction's request.

(2) The requesting jurisdiction shall acknowledge receipt, in writing, of the notice of intent to seek reimbursement from the responding jurisdiction.

(3) The SMAA coordinator shall record all documents related to deployment and reimbursement from the requesting jurisdiction personnel acting as an agent of the state.

(a) The SMAA coordinator shall coordinate with both jurisdictions to encourage and facilitate proper reimbursement, if needed.

(b) The SMAA coordinator may provide reminder notices in anticipation of due dates including the notifications required under Subsections (3) and (4).

(c) The division may designate a financial representative to monitor and provide guidance to participating jurisdictions concerning reimbursement.

(4) When the notification requirements of Subsection (3) have been met, the responding jurisdiction may submit a request for reimbursement to the requesting jurisdiction within 60 days of the termination of statewide mutual aid assistance.

(a) The request for reimbursement shall include a cover letter that summarizes the assistance provided under Form 101.

(b) The request for reimbursement shall also include the following:

(i) a comprehensive invoice listing resources provided with the total cost; and

(ii) supporting documentation including copies of individual invoices, travel claims, vouchers, and other similar items.

(c) The request for reimbursement shall also include a copy of any amendments or supplements to the original Form 101 and accompanied by the itemized costs and respective supporting documents.

(5) The requesting jurisdiction shall reimburse the responding jurisdiction no later than 30 days from the date of receiving the notice under Subsection (1) unless:

(a) either jurisdiction provides written notice to the other jurisdiction that disputes the reimbursement costs, or alleges noncompliance with the applicable procedures and criteria; or

(b) the jurisdictions agree to an extension for reimbursement.

(6) Disputes regarding reimbursement shall first be addressed between the responding jurisdictions and requesting jurisdiction within 30 days after either party provides notice of the dispute.

(a) The jurisdictions shall make a reasonable effort to resolve the dispute during the 30 day period.

(7) If a dispute cannot be resolved by the jurisdictions within 90 days after the notice of dispute, either party may submit the dispute to the committee.

(a) Requests to the committee must be made no later than 30 days after the end of 90-day period described in Subsection (7).

(b) The requesting jurisdiction shall submit the following documents to the committee for review:

(i) Form 110;

(ii) a concise narrative explaining the dispute; and

(iii) the documents listed in Subsections (4)(a) through (c).

(c) The requesting and responding jurisdictions may submit other supporting evidence that is relevant to the dispute.

(d) The committee has 30 days to schedule the matter for a hearing.

(e) The committee chairperson shall select a quorum of seven committee members to participate in the hearing.

(f) Hearings are designated as informal adjudications pursuant to Utah Code Ann. Section 63G-4-202.

(g) The committee, by majority vote, shall issue a final written decision within 30 days of the hearing that includes findings of fact and its reasons for its decision.

R704-2-11. Waiver of Reimbursement.

(1) A responding jurisdiction may waive, in writing, any rights to reimbursement under Sections 53-2-507 and 53-2-508.

(2) Waiver of any reimbursable right shall specify each item waived in order to provide notice to the requesting jurisdiction and the SMAA coordinator, if applicable.

(3) Waiver of any reimbursable right shall be delivered to the requesting jurisdiction with a copy delivered to the SMAA coordinator, if applicable, no later than 90 days after the termination of statewide mutual aid assistance.

R704-2-12. Reimbursable Expenses.

(1) The requesting jurisdiction shall reimburse the responding jurisdiction for costs related to deployment pursuant to Form 101.

(a) In order to be eligible for reimbursement, all costs must be documented and sufficiently detailed in Form 101 and include supporting documentation.

(b) A jurisdiction that fails to submit all required reimbursement forms by due dates listed in this rule forfeits its right to reimbursement.

(2) Unless otherwise specified in Form 101, the responding jurisdiction shall continue to compensate its

personnel according to its employment policies at the time of the event.

(a) The requesting jurisdiction shall reimburse the responding jurisdiction for agreed upon costs and expenses incurred during the event.

(3) The requesting jurisdiction shall reimburse the responding jurisdiction for use, damage, or loss of any equipment that the responding jurisdiction provided during the event, exercise, or drill.

(a) If practicable and at the request of the responding jurisdiction, the requesting jurisdiction may provide fuels, miscellaneous supplies, and minor repairs.

(4) Unless damage is caused by gross negligence, bad faith, or willful misconduct by the responding jurisdiction, the requesting jurisdiction shall reimburse the responding jurisdiction for all materials and supplies exhausted or damaged during the event.

(a) The parties may agree that the requesting jurisdiction may replace equipment, materials, and supplies with like, kind, and quality as determined by the responding jurisdiction.

KEY: Statewide Mutual Aid Act, reimbursement
September 29, 2014 53-2a-302

R746. Public Service Commission, Administration.
R746-700. Complete Filings for General Rate Case and Major Plant Addition Applications.
R746-700-1. General Provisions Applicable to All 7XX Series Rules.

This rule provides provisions for complete filings for general rate case and alternative cost recovery for major plant addition applications and other 7XX series rules, meaning R746-700-1 through and including R746-700-51.

A. Purpose. The 7XX series rules apply to an application for a general rate case filed by a public utility for an increase or decrease in base rates pursuant to 54-7-12 and an application for alternative cost recovery for a major plant addition filed by an electrical corporation or gas corporation public utility for cost recovery of a major plant addition pursuant to 54-7-13.4.

B. A public utility anticipating to file a general rate case or major plant addition application shall file with the Commission a non-binding notification of its intent to file such application at least 30 days prior to the anticipated filing date of the application. The notification shall be served on all parties that participated in the public utility's last prior general rate case or major plant addition proceeding respectively. The Commission may grant an exception or modification to this notification requirement based on a showing of good cause by the public utility.

C. Minimum filing requirements for a complete filing. Sections 700-10, 700-20, 700-21, 700-22, 700-23, 700-30, 700-40, 700-41, 700-50, and 700-51 set forth the information which must be contained in an application, testimony, exhibits, evidence, data, and any other informational documents filed with an application for the application to be considered a complete filing pursuant to 54-7-12(2) or 54-7-13.4(2).

D. Paper and Electronic media documents.

1. All documents filed with the Commission are to be in paper and electronic media versions as directed by R746-100. When a particular exhibit, data or informational document or its accompanying documentation required by a rule is voluminous, a proceeding participant shall file only three complete paper versions and the electronic media version with the Commission. The proceeding participant shall file any additional paper versions as subsequently directed by the Commission.

2. A proceeding participant is encouraged to provide voluminous material to other participants in a proceeding in an electronic media version. Unless a participant in a Commission proceeding notifies the Commission and other proceeding participants that it is unable or unwilling to receive documents in electronic media, provision of documents to a participant need only be in electronic media.

3. An applicant shall provide electronic media versions of its application and additional information and documents to be provided pursuant to any series 7XX rule to the Division of Public Utilities and the Office of Consumer Services, other parties granted intervention in the utility's last prior application proceeding, and any other person that has petitioned for intervention in the proceeding. An applicant need not provided these documents to a person whose intervention it opposes unless and until the person is granted intervention by the Commission. Notwithstanding the foregoing, the applicant shall provide a reasonable number of paper copies of the documents to the Division of Public Utilities and the Office of Consumer Services upon request.

E. Format, detail, etc. of documents, information, data, etc., indication of non-existence of information or unavailability of information of the type, detail or format described in a rule provision in the public utility's normal course of business and accounting, and confidential and privileged documents or information.

1. The format, detail, etc. of documents, data, information, etc. provided pursuant to any 7XX series rule shall be in the same format, detail, etc. as provided in the public utility's last prior proceeding or as otherwise directed by the Commission in or subsequent to the last prior proceeding. If a document, spreadsheet, schedule, etc. has internal formulas or other types of inter-cell relationships, the electronic media version shall be provided with such formulas or cell relationships intact.

2. If any series 7XX rule requires particular documents, data, information, etc. to be produced and the documents, data, information, etc. do not exist, the proceeding participant shall specifically so indicate. If any 7XX series rule requires information to be produced of a certain type or in a certain detail, format, etc. which is not so maintained in the normal course of business and accounting, the participant will so indicate and identify and provide what information does exist as maintained by the participant.

3. Information claimed to be confidential that would fall within any 7XX series rule that is filed or provided by a proceeding participant in connection with an application shall be filed or provided under the terms of R746-100-16 or any applicable protective order. If a proceeding participant believes a document, data, information, etc. would fall within any 7XX series rule but claims a privilege affects its production, in lieu of providing the document, data, information, etc., the participant shall provide a description of the document, data, information, etc. and explain the privilege's application to the document, data, information, etc.

R746-700-10. Test Period Information to Be Included With a General Rate Case Application.

A. Cases where the test period is first identified in the application.

1. The applicant will provide information which will demonstrate what adjustments are required to be made to the 12 months of actual, unadjusted results of operations data, including all regulated costs and revenues, contained in the most recent periodic reported results of operations submitted to the Commission, to arrive at the test period used by the applicant in its application, on both a Utah jurisdiction and total company basis. If the public utility does not submit periodic reported results of operations to the Commission, the applicant shall use the public utility's most recently audited 12-month period in lieu thereof as the base period upon which the test period used in the application is developed.

a. Adjustments to be demonstrated include, but are not limited to: normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application, and all further adjustments to arrive at the test period used by the applicant in the general rate case filing.

b. The applicant will provide information explaining why the test period used is the most appropriate for the case.

c. In addition to the information relating to each adjustment identified in compliance with R746-700-10.A1.a, the applicant will also provide a summary index which identifies each adjustment or portion of an adjustment made in the filing material which can be used to locate where each adjustment or portion thereof is addressed, treated, applied, etc. in the application, testimony, exhibits and other documentation submitted. The summary index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

2. If the test period used in the application is a future test period, in addition to the demonstration of adjustments to be made for the test period used by the applicant in the general rate case application, the applicant will make the same demonstration for the 12-month period ending on the last day of

June or December, whichever is closest, following the filing date of the application if this alternative period does not have an end date beyond the test period used in the general rate case application.

B. Cases where the test period is identified and approved prior to the filing of an application.

1. An applicant planning to file an application may first request Commission approval of a test period to be used prior to filing an application. The request to approve the proposed test period shall be accompanied by testimony and exhibits providing information supporting the proposed test period.

2. Subsequent to the Commission's approval of a test period, the applicant may then submit an application, using as the test period for the case the test period previously approved by the Commission and need not provide the alternative test period demonstration required by R746-700-10.A.2.

R746-700-20. Information For a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using the allocation methods used in the public utility's last general rate case proceeding or any allocation method subsequently approved by the Commission. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-20 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. Historical results of operations information:

1. actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period as contained in its last periodic reported results of operations filing submitted to the Commission.

2. adjusted results of operations for the same period.

3. a description of any significant changes in accounting policies for the 24-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a forecasted test period is used, any future significant changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

B. If a non-forecasted test period is used in the application, the applicant shall provide information identifying and supporting each and every modification to the historical results of operations to arrive at the non-forecasted test period used in the general rate case application.

C. If a fully or partially forecasted test period is used in the application, which forecasted test period was not previously approved by the Commission for the general rate case application, the following forecasted test period information shall be provided (the format of the forecasted test period data shall be comparable to the historical results of operation information):

1. Revenues, with details supporting the test period revenues including (as applicable):

a. Usage, per customer by customer class

b. Demand and energy usage

c. Assumptions used in the development of the revenue forecasts

d. Billing determinants, by customer class, used to calculate the forecast test period revenues.

e. Charges, fees, and rates used in the forecast development

f. Contract changes or other specific changes anticipated in the forecast.

2. Operating Costs, using the same cost categories as used in the base period used for compliance with R746-700-10.A, with details supporting the test period operating cost information, including:

a. Forecasted costs relying on escalators or drivers will include the details of the base costs and the key drivers that impact the forecasted amount. If forecasted costs are not based on historical levels that have been inflated or escalated, the applicant shall provide supporting documents in the most detailed level available.

b. The information will identify the index or rate of inflation applied to accounts, budget items or specific cost components that result in adjusted costs in the forecasted test period. Source documents supporting the index or rate of inflation applied will be identified and will be provided or made available.

3. Labor Costs shall be identified separately. The applicant will provide:

a. The actual most recent number of full-time equivalent employees and, separately, the forecasted number of full-time equivalent employees for the forecasted period. The most recent number of actual contract labor employees and the forecasted number of contract labor employees for the test period will also be provided as available and separately identified. The most recent number of actual union labor employees and the forecasted number of union labor employees for the test period will also be provided as available and separately identified.

b. The associated costs related to the full time equivalent labor and contract labor levels. Direct employees, contract employees, union and nonunion employees will each be provided separately.

c. Overtime costs, premiums, incentives, or other labor costs included in the forecast, with each provided separately. Union and nonunion costs shall be provided separately.

d. Any assumed salary and wage increases included in the projected labor costs will be identified. Any of the increases supported by a union contract will be so identified.

e. Pensions and benefits, overheads or other employee benefit costs that are included in the forecast period. Each of the separate employee benefit components will be separately identified (i.e., medical, dental, pensions, etc.) Any assumptions regarding projected increases in such costs caused by factors other than changes in full time employee levels will be identified and described, with supporting assumptions identified.

f. If projected increases in pension expense cause a material cost impact, at a minimum, the following information should be provided for one year prior to the historical period through the test period: service cost, interest cost, expected return on assets, net amortization and deferral, amortization of prior service cost, and total net periodic pension cost. The information shall also include for each of the 12-month periods the expected long-term rate of return on assets, discount rate, salary increase rate, amortization of transition asset or obligation, percent of pension cost capitalized, minimum required contribution per IRS, maximum allowable contribution per IRS, and actual (or projected) contribution made to the trust fund. Also included shall be the projected year-end balance at the end of each of the 12-month periods for accumulated benefit obligation, projected benefit obligation, fair value of plan assets, and market related value of assets.

4. Capital Expenditures or additions. The applicant will provide capital expenditures detail, and changes affecting rate base, including:

a. The detail for the changes, beginning with the start of the historic period results of operation through the test period.

The detail will include dollar amounts and in-service dates.

b. The detailed calculation of depreciation expense and accumulated depreciation impacts as a result of the capital expenditures affecting rate base. For depreciation expense, the information will include the balances by plant account or function, depending on how the projection is done, to which the depreciation rates are being applied and the respective depreciation rates being used, by account or function, depending on how the projection is done.

c. Interdependencies of capital expenditures to operation and maintenance items will be identified.

d. A list will be provided of all major capital additions to rate base individually exceeding $1,000,000 or 0.01% of total company net plant in service, whichever is greater for each year, beginning with the year prior to the historic periodic reported year through the test period. Projects under $1,000,000 shall be grouped in aggregate utilizing the utility's usual plant categorizations. A brief description will be provided for each major capital addition in the list.

i. exceeding 0.1% of total company net plant in service or $5,000,000, whichever is greater, for an electrical corporation, or

ii. exceeding 0.1% of total company net plant in service or $1,000,000, whichever is greater, for a gas corporation.

e. Detailed calculation of plant retirements.

5. Regulatory Adjustments. The applicant will provide details of all the regulatory adjustments required in the filing:

a. Information for recurring regulatory adjustments, such as amortizations, indicating compliance with past Commission orders for any item included in the filing.

b. Separately, a reversing adjustment and the reasons for non-inclusion or departure from a Commission ordered practice or adjustments if the applicant does not wish to have them apply to the application.

c. Unless already included in unadjusted results, regulatory adjustment information will include disallowances from prior orders, implementation of accounting orders approved by the Commission, or other adjustments necessary to make the forecasted test period data acceptable for ratemaking in Utah. Each of the regulatory adjustments will be supported by prefiled testimony or a detailed description contained within the schedules.

6. Other Rate Base. Details of other rate base accounts shall be provided by the applicant. For other items of rate base, such as deferred debits, accumulated deferred income taxes, materials and supplies, miscellaneous rate base, customer advances, deferred credits, etc., the applicant shall provide information showing the 12-month period of the historical results of operations, and any changes, both debits and credits, to those amounts through the test period resulting in the projected amount included in the filing. The information shall provide descriptions of any adjustments and modifications made to the historical period amounts and assumptions included in the projections. For any accounts in which no change from the historical level is proposed, a description of why the amount is not forecasted to change shall be included.

7. Taxes. Forecasting methods, calculations and key assumptions used to adjust historical tax information to projected costs and results will be provided on a tax item basis (i.e., income, FICA, property taxes, etc).

R746-700-21. Cost of Service and Rate Design Information for a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-21 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. A Utah Class Cost of Service Study.

1. A Utah Class Cost of Service Study based on the test period with supporting documentation including the development of allocation factors.

2. If a new customer class is proposed, the applicant shall either:

a. include class cost of service studies; one which uses only existing customer classes and another with the newly proposed class included, or

b. explain why no cost of service study including the new customer class is included and how the new customer class is to be treated in setting rates in the case.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement. An exhibit will be provided showing the test period blocking based on adjusted actual and forecasted billing units in the development of the revenues for each rate schedule.

D. Its proposed tariff sheets for all tariff provisions for which it proposes changes.

1. An applicant need not include proposed tariff sheets for changes to tariff pages showing rates, charges, or fees if these proposed price changes are provided in a readily identifiable form elsewhere in the application.

R746-700-22. Additional Information for a General Rate Case Application Using a Forecasted Test Period Filed by an Electrical Corporation or a Gas Corporation.

If not already included with the application, pursuant to R746-700-20 or R746-700-21, an applicant shall also file with the Commission the following information or documents when filing a general rate case application which uses a forecasted test period. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-22 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation or gas corporations shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

A. Definitions. As used herein, the following terms shall have the indicated meanings:

1. Time Periods. Definitions of time periods for which information is to be provided in compliance with this rule are as follows:

a. Year: A 12-month period designated as "12 months ending Month Date, Year".

b. Base Year (BY): The 12-month historical period ending on the ending date for the most recent periodic reported results of operations filing submitted for the public utility, or if it does not file periodic results of operations, the base period upon which the test period used in the application is developed.

c. Test Period (TP): The 12-month period used as the test period for the general rate case application.

d. Historical Year(s) (HY): Year(s) immediately preceding the Base Year.

e. To Date: Up to the most recent date for which information is reasonably available to the public utility in preparing its general rate case application.

f. Workpapers: The documents and source material used to develop the inputs to the general rate case filing. The type, nature, level of detail, format, etc. of the information compilation, schedule, document, etc. shall be reasonably comparable to that provided to parties in the public utility's prior general rate cases.

2. Provide, Describe, etc. The terms "provide" or "describe," or terms with similar meaning, shall mean to deliver available electronic copies and/or paper copies of designated data and documents to interested persons; provided that, when necessary and appropriate, prompt arrangements may be made for review of designated data and documents at a utility location in Utah or at another mutually agreeable place. Spreadsheets and workpapers are to be provided in "live" electronic format (not PDF), i.e. models and spreadsheets are to be provided with formulas intact and input data available.

3. Materiality. Materiality is defined as a change in requested Utah jurisdictional revenue requirement equal to or greater than 0.1 % of total state revenue requirement or $500,000, whichever is less.

4. Model(s). The term Model(s) shall mean the major analytical software tools and spreadsheets used by the utility to develop its general rate case application. Smaller analytical tools, such as special purpose electronic spreadsheets, are not included in the definition of the term Model(s) for purposes of this rule.

B. Revenue Requirement Information.

1. Forecasted test period data. A comparison of the Test Period data Results of Operations (RO) to the Base Year actual, unadjusted RO and adjusted RO on both a jurisdictional and total company basis. This is to be made available in a side-by-side comparison on a consistent basis by FERC Account.

2. Operating and Capital Budgets. A comparison of the utility's operating budget and capital budget to the actual results for the Base Year, the prior Historical Year, and To Date on a total company basis. This comparison is to be at the most detailed level available and provide available explanation for material variances.

3. Labor Costs. A comparison of budgeted labor costs and number of full-time equivalents to the actual labor costs and full-time equivalents by year for the Base Year and the prior Historical Year on a total company basis. These shall show separately, to the degree available, the direct labor costs, premiums, incentives, benefits and overhead costs. These shall show contract labor costs separately from direct labor costs, and union labor costs separate from nonunion costs. The information shall provide available explanations for material variances.

4. Workpapers. The information shall provide the forecast workpapers (including assumptions, spreadsheets and tests).

5. Forecasted Data - Revenue Requirement.

a. Support and explanations for forecasted values, including Base Year starting values, adjustments made to the Base Year values and key drivers that impact the forecasts, together with supporting documents.

b. Indices, inflation rates and escalation factors used in preparing forecasts, including supporting source documents.

c. A revenue requirement workbook that tracks all input data beginning with the Base Year through the Test Period. This will provide summarized revenue requirement sections of the jurisdictional allocation model for the Base Year, the Test Period and any intervening year. The workbook and summaries are to include, inter alia, billing determinants, rate base and capital structure, including dollar capitalization, for the specified Years.

d. Complete net power cost calculations for any intervening year between the Base Year and Test Period.

6. Models. Workable versions of Models utilized in determining or projecting rate case values, with formulae intact and source data included, along with available instructions and write-ups regarding use of the Model and written descriptions of the Model and its inputs.

C. Cost of Service Information

1. Forecasted Data - Class Cost of Service. Class cost of service data on a Utah allocated basis under all approved jurisdictional allocation methods for the Base Year and Test Period.

2. Forecasted Data - Rate Design. Test Period rate design data on a Utah allocated basis under all approved jurisdictional allocation methods used for reporting purposes.

D. Miscellaneous Information

1. Accounting - Changes. A detailed description of Material changes in accounting policies or procedures adopted by the utility since the prior general rate case or as anticipated through the end of the Test Period. This will include a detailed description of the impact of change in accounting policy or procedure on the Test Period and identify the basis of the change.

2. Accounting - Write-offs. A detailed description of Material write-offs of assets and/or liabilities from the start of the Base Year - To Date that affect Utah revenue requirement. For each material write-off, the following will be provided:

a. Copy of journal entry recording the write-off;

b. Detailed description of the purpose of the write-off;

c. Copies of studies, reports or analyses done in determining whether or not to write off the asset;

d. Amount of the write-off and identification of the accounts charged on a total Company and a Utah jurisdictional basis; and

e. Amount included in the projected Test Period for write-offs, if any, on a total Company and a Utah jurisdictional basis, by account.

3. Affiliates - Organizational Charts. For the Base Year and Test Period and continuing To Date, the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status.

4. Affiliates. A detailed description of corporate restructurings and changes in affiliate relationships since the filing of the prior general rate case and also describe changes in the corporate and affiliate relationships between the Base Year and the end of the Test Period reflected in the filing.

5. Affiliates. A copy of Material new or Materially modified contracts or agreements entered into since the filing of the prior general rate case, including attachments thereto, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or costs allocated or directly charged to Utah regulated operations included in the general rate case application, between the utility and/or its parent company and affiliated companies for services and/or goods rendered between or among them. This is to include a list of active contracts unless already provided in the most recent Affiliate Interest Report.

6. Affiliates. A copy of cost allocation manuals and/or policies and procedures that set forth the detailed cost allocation methodology and/or pricing methodology used to charge costs between affiliates that have changed since the filing of the prior general rate case.

7. Audit - Financial. A copy of each adjusting journal entry made in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. Supporting documentation will be included. The information will also identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description

of why the adjustment was not accepted or made.

8. Audit - Financial. A copy of management letters received from the utility's independent auditors or responses to those management letters for the Base Year, the prior Historical Year and the period To Date.

9. Audit - Financial Audit Workpapers. If access to audit workpapers is allowed by the utility's independent auditor, the utility will coordinate review of the financial audit workpapers for the most recent completed financial audit conducted by the utility's independent auditors at a mutually agreed upon location. If access to workpapers is not allowed by the independent auditor, the utility will coordinate the review of the most recent quarterly review conducted by the utility's independent external auditors prepared for the utility's board of directors.

10. Audits - Internal. A listing of internal audits conducted by or for the utility or its parent company for the Base Year, the prior Historical Year and To Date if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in the general rate case application. Notice of Internal Audit reports completed during the pendency of the case will be provided upon completion to all parties participating in the case.

11. Board of Directors - Meeting Minutes. The Board of Directors' meeting minutes for the Base Year, the prior Historical Year and To Date for the utility and the parent company if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in general rate case filings for the same period.

12. Budget. Complete copies of detailed annual operating and capital budgets for the Base Year through the end of the Test Period.

13. Budget. Copies of operating and capital budget instructions and directives provided to employees, including assumptions, directives, manuals, policies and procedures, timelines, and descriptions of budget procedures for the budget or forecast for the Test Period and To Date.

14. Budgets - Operating Plans. If available, copies of written operating plans that describe the utility's goals and objectives for the Base Year through the end of the Test Period.

15. Budget - Variance. A complete copy of quantitative and narrative monthly, quarterly and annual comparisons of operating and capital budgets to actual expenditures for the Base Year, the prior Historical Year, and for the period from the Base Year To Date.

16. Cost of Capital - Debt Expense. The currently forecasted financings for the next three years.

17. Cost of Capital - Debt Expense. The monthly balance of short-term debt and monthly short-term debt cost rates, for the Base Year, the prior two Historical Years and To Date.

18. Cost of Capital. Copies of the most recent bond rating agencies reports on the Company.

19. Employee Costs. A breakdown of the total amount of gross payroll and employee benefit costs (by benefit type) for the Base Year, the prior Historical Year and through the end of the Test Period between amounts expensed and amounts capitalized and provide the percentage of payroll and employee benefits (by benefit type) charged to expense for each Year.

20. For the Base Year, the prior Historical Year, To Date and for the Test Period, the amount of overtime, the amount of premium pay, the amount of other salary/labor costs and the amount of incentive compensation in total and expensed for each.

21. Employee Costs. A list of compensation and benefit studies the utility has for the Base Year, the prior Historical Year and To Date and indicate which of the studies were used (if any) in projecting the compensation and employee benefit costs for the Test Period.

22. Employee Costs - Employee Levels. Describe, in detail, Material employee reductions, employee severance plans, or early retirement programs conducted or anticipated by the utility during the Base Year, the prior Historical Year, and To Date and as projected through the end of the Test Period that are and are not reflected in the application. If anticipated, but not reflected in the application, explain why they are not included. This should provide information on major plans or programs beyond cost management efforts undertaken in the normal course of business. This should include, but not be limited to, a detailed description of the plan, number of employees offered or projected to be offered early retirement or severance, number of employees accepting or projected to accept early retirement or severance, projected cost savings and costs associated with the program. For costs incurred, identify the amounts, by FERC account, and the dates the entries were booked.

23. Employee Costs - Employee Level. Separate lists of the budgeted and the actual number of employees (where available), by month, for the Base Year, the prior Historical Year, the Test Period and To Date. If the labor force levels are other than full-time equivalent positions, provide a separate listing stated in terms of full-time equivalent positions.

24. Employee Costs - Wages and Salaries Levels. The actual percentage of increases in salaries and wages for exempt, non-exempt and union employees for the Base Year, the prior Historical Year, Test Period and To Date.

25. Employee Costs - Incentive Plans. Complete copies of bonus programs or incentive award programs in effect for the utility for the Base Year, the prior Historical Year, the Test Period and To Date. Identify incentive and bonus program expenses incurred in the Base Year, the prior Historical Year, the Test Period and To Date and identify the amounts included in the Test Period. Identify the accounts charged. Identify incentive and bonus program expenses charged or allocated to the utility from affiliates or the parent company in the Base Year, the prior Historical Year, the Test Period and To Date.

26. Employee Costs - Benefits. A listing of health and other benefits received by employees during the Base Year. Provide a detailed description of changes to employee benefits occurring subsequent to the Base Year To Date and anticipated future changes through the end of the Test Period that are reflected in the filing.

27. Employee Costs - Pensions. The two most recent pension actuarial reports prepared for the utilty.

28. Employee Costs - Post Retirement Benefits Other Than Pensions (PBOP). The two most recent PBOP actuarial reports prepared for the utility.

29. Employee Costs - Pensions and Post Retirement Benefits Other Than Pensions (PBOP). The list of assumptions used by the utility and its actuaries regarding the pension and PBOP costs for the Test Period that are included in the filing.

30. Operation, Maintenance, Administrative and General (OMAG) Expenses - Other - Contributions. For the Base Year and the Test Period, a list of contributions for charitable and political purposes, if any, included in accounts other than below the line. Indicate the amount of the expenditure, the recipient of the contribution, and the specific account in which the expense is included in the filing. Also identify for the Base Year and the Test Period the amounts of contributions for charitable and political purposes charged to the utility from affiliates in accounts other than below the line accounts.

31. OMAG Expenses - Advertising. For the Base Year, the prior Historical Year and the Test Period the amount of advertising expense, by account, by type of advertising (i.e., informational, instructional, promotional).

32. OMAG Expenses - Dues, Industry Associations. The Material amounts included in the Base Year, the prior Historical Year and the Test Period for above-the-line payments to industry associations. Identify the organization/association

name and amounts, along with the account in which the costs are included in the filing. If any of the dues or other amounts paid to the organizations/associations go toward lobbying and public relations efforts and are recorded in above-the-line accounts, provide the associated amounts included in the above-the-line accounts whether Material in magnitude or not.

33. OMAG Expenses - Outside Services Expense. An itemization of Material outside services expenses included in FERC account 923 for the Base Year, the prior Historical Year and the Test Period.

34. OMAG Expense - Injuries and Damages. The amount of injuries and damages expense for the Base Year, the prior Historical Year, the Test Period and To Date.

35. OMAG Expense - Insurance. The amount of insurance expense, by insurance type (i.e., property insurance, liability insurance, workers compensation, directors and officers liability insurance, etc.) for the Base Year, the prior Historical Year and the Test Period and identify the accounts the associated costs are included in.

36. OMAG Expense - Insurance. For insurance coverage for which the utility is self-insured, a description of that self insurance, a description of how it is accounted for in the utility's books and records and a description of activity for the Base Year, the prior Historical Year and the Test Period.

37. OMAG Expense - Legal Settlements. A list of Material amounts included in the Base Year and the Test Period (on a direct charge basis, affiliate billing, or allocation) that are the result of the settlement of lawsuits or other legal action.

38. OMAG - Uncollectibles - Bad Debt Reserve. For the Base Year, the prior Historical Year and the Test Period the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same periods, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

39. OMAG - Uncollectibles. A detailed description of changes in the utility's collection policies or write-off policies since the filing of the prior general rate case.

40. OMAG - Cost-saving Programs. A list and detailed description of cost-saving or cost increasing programs and initiatives implemented during the Base Year, To Date, and included in the Test Period. This should provide information on major plans or programs beyond efforts undertaken in the normal course of business and having a Material impact.

41. Financial - Strategic Plans. Copies of completed strategic plans and the most recent plan approved by the Board of Directors for the utility and the plan that was utilized at the time of and in the preparation of its application, if different.

42. Penalties and Fines. A list of penalties and fines in the Base Year and the Test Period and indicate in which accounts the associated amounts are included.

43. Rate Base - Working Capital. A complete copy of the lead/lag study, with supporting workpapers, used to compute cash working capital for the utility's application.

44. Reserve Accounts. Information on whether or not the utility maintains reserve accounts (e.g., an injuries and damages reserve account). If so, provide the monthly balances in reserve accounts for the Base Year, the prior Historical Year, the Test Period and To Date. This listing should include the monthly debits and credits to the reserve accounts. Also, provide the amount included in the Base Year and the projected Test Period expenses, by account, for building-up the reserve balances.

45. Revenues: Regulated Retail Sales. Provide by customer class, by month, the number of customers, actual usage, and normalized usage for the Base Year, the prior Historical Year, the Test Period and To Date.

46. Revenues - Other. Provide on a total company and a Utah jurisdictional basis, for the Base Year, the prior Historical Year, the Test Period and To Date the amount of other nonregulated-retail-sales revenues by revenue type.

47. Sales of Property. For the Base Year, the prior Historical Year, the Test Period and To Date, information showing whether the utility sold property, in which the proceeds for a property, which alone, or for multiple properties, which in the aggregate, would be Material. If so, for each such sale identify the property sold; whether, when, and in what manner it was included in rate base; show details of how the gain or loss was calculated; indicate when the sale occurred; and explain how and whether the utility is treating such gain or loss in its application. For sales in which the proceeds would be Material, individually or in the aggregate, provide a list of any properties currently offered for sale and those projected to be offered for sale through the end of the Test Period. The property sales information may be limited to sales of property that had been or are included in Utah rates while in service.

48. Taxes: Income. A list of and provide copies or make available for review, subject to R746-100-16, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, depending on specific content, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the filing of the prior rate case.

49. Taxes: Income. Provide copies or make available for review, subject to R746-100-16, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, copies of the most recent State and Federal income tax returns in which the utility participated.

50. Taxes: Income. Provide a copy of the current tax sharing agreement in which the utility participates.

R746-700-23. Additional Power Costs Information for a Forecasted Test Period to Be Filed by an Electrical Corporation.

A. An electrical corporation that has included power costs in a forecasted test period shall also file with the Commission the following information or documents relating to its power cost projections with a general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-23 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

B. All information should be provided or available electronically and, in the case of Excel spreadsheets, with all formulas intact including all hierarchy of linked spreadsheets. The term "PCM" herein refers to any power cost model used by the utility, or any subsequent enhancements to or replacements of the power cost model used in the utility's last prior general rate case. The term "workpapers" means the documents used to develop the inputs to the PCM. This may include such items such as contracts, emails, white papers, studies, utility computer programs, Excel spreadsheets, word process documents, pdf and text files, computer programs, or any other data or documents relied upon to support the cost details in the application. If the inputs used in the PCM were developed from a document, such as a contract, provide the contract with the PCM inputs highlighted.

C. Power Cost Modeling Data:

1. Workpapers that show the source, calculations and details supporting the testimony, other exhibits and all PCM input data. The workpapers will include, at a minimum, copies of the net power cost report in Excel and the net power cost

model database.

2. Identification of the time periods (Reference Period) used to determine input items (e.g., outage rates) in the PCM which are based upon an examination, average, etc. of a multi-year period.

3. Compilations of actual net power costs produced by the utility that were referenced in the testimony or exhibits, to the extent that actual power cost results are discussed or cited in the utility's testimony or exhibits.

4. A list and explanation of all modeling or logic changes or enhancements to the PCM that have been implemented since the last prior general rate case. This will include a statement of the direction and amount of change in net power costs resulting from each such change and documentation describing each Material change as well as PCM runs and workpapers quantifying the impacts of these changes.

5. Access to or a copy of the PCM model used by the utility to compute power costs in the Test Period.

6. The latest documentation for the PCM.

7. The current topology maps in the PCM along with an explanation for all the differences that have been made to the topology since the last prior general rate case and an explanation of why the changes were made. Include supporting documentation, such as contracts resulting in changes to the transfer capabilities used in the PCM.

8. All documents, workpapers, data or other information used by the utility in determining, setting, or calculating any PCM input, constraint, etc., including, but not limited to, where applicable:

a. market caps,

b. outage rates (planned and unplanned) including all backup data showing each outage (planned or unplanned, etc.) and duration (planned or unplanned) considered in the Reference Period, including NERC cause code, type of event, duration, energy lost, etc.,

c. the date and a copy of any forward price curve used, showing monthly heavy load hour and light load hour,

d. short-term firm transactions (including short-term firm indexed transactions and swaps), each transaction or contract will have a designation as to its purpose (i.e., trading, arbitrage or balancing.),

e. all contracts modeled in the PCM that were not included in or have been amended since the last prior general rate case, providing for each:

(i) A copy of the contract (in pdf or electronic format, if available), and

(ii) input assumptions related to the contract,

f. all fuel cost inputs,

g. heat rate curves for each resource, including the derivation of the heat rate curves,

h. identification of each instance in which the utility changed any maximum capacities, minimum up or down times or unit minimum capacities for thermal or hydro generators modeled in the PCM since the last prior general rate case,

i. each load adjustment,

j. inputs for Qualifying Facility or QF contracts,

k. screens applied to restrict uneconomic dispatch of resources,

l. start up fuel costs, start up O and M costs and any other form of start up costs modeled,

m. loss factor data used to develop the load forecast for the system and for each state for the most recent five calendar years and for the most recent five fiscal years; include a comparison of those loss factors to those that were used in developing loads for the PCM for the test period used in the case,

n. the system level loss factors assumed in any PCM used in the most recent (or current) rate cases for any other jurisdiction in which the utility operates,

o. the actual generation of each coal, gas, hydro and wind generating unit modeled in the PCM for each month for the Reference Period,

p. hourly generator logs for each wind, coal, gas and hydro unit modeled in the PCM for the Reference Period,

q. the schedule for each generation unit's planned and actual outages for the test period, the most recent calendar year and the next four calendar years,

r. hourly logs for all contracts modeled in the PCM, showing actual data (hourly sales or purchases) for the Reference Period,

s. the details of Short Term Firm and Non-Firm transmission used by the utlity during the Reference Period.

t. for each of the transmission contracts whose costs are included in the PCM, identify the purpose of the transaction, why it is used and useful in the test period, the amount of capacity or type of transmission service it provides, and where the capacity or service provided by this contract is modeled in the PCM,

u. data for the Reference Period or for the most recent four years available for all third party transmission imbalance transactions that have been included in Short Term Firm or secondary transactions during that period,

v. any links and other inputs for Short Term Firm (including any related to SP 15) and Non-Firm transmission modeling used in the PCM,

w. the hydro planned and unplanned outage rate,

x. to the extent that the utility uses any ramping adjustment in its case, information describing and detailing all ramping adjustments made (including all ramping energy assumed to be lost for each outage event modeled in the ramping analysis),

y. the costs of wind integration as modeled in the PCM, and

z. hedging contracts, already in place and those assumed for forecasting purposes.

R746-700-30. Information for an Alternative Cost Recovery for a Major Plant Addition Application Filed by an Electrical Corporation or a Gas Corporation.

An applicant submitting an alternative-cost-recovery-for-a-major-plant-addition application shall include the following information as part of the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods where applicable. If the same information was previously provided by the applicant in a prior proceeding in which the plant's construction or acquisition was approved by the Commission pursuant to 54-17-302, the applicant shall provide copies of such previously provided information with the application. If the plant's construction or acquisition was approved subject to conditions pursuant to 54-17-302, the information shall be provided as ordered by the Commission in the order approving the major plant addition subject to conditions. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-30 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information.

1. All documents and presentations that were provided to management, senior management and the Board of Directors of the utility and its affiliates related to the plant addition.

2. Copies of all Board of Directors' minutes of the utility and its affiliates where the plant was discussed, approved, reviewed, evaluated, or presented.

3. Details of the plant being acquired including its location, capacity, technologies used, project milestones or progress dates, projected in-service date and demonstrating that

the plant addition is a major plant addition under 54-7-13.4.

4. Description of any changes, modifications, etc. to the existing utility plant/system that may be necessary to integrate the plant addition with the utility's system.

5. Information establishing the prudence of the plant addition, information addressing the provisions of 54-7-13.4, and the provisions of 54-17-302 and 54-17-303.

6. Information establishing the consistency of the plant addition to projected plant acquisitions in the utility's latest Integrated Resource Plan and its Action Plan. Show that the plant addition resource is as favorable or more favorable than the compared Integrated Resource Plan resource items in terms of least cost and least risk or explain why it need not.

7. Any and all documents and analyses that address the plant addition's projected costs, savings and benefits and demonstrate how and when the utility's ratepayers will see a net benefit from the plant addition and quantify the net benefit.

8. Where applicable, information on whether and how the plant addition has been or will be inspected as part of due diligence, including identification of who conducted or will conduct the inspection and copies of all reports or other documents prepared by the inspectors.

9. A list of all outside consultants or advisors used, or expected to be used by the utility in connection with the plant addition and all reports, including interim reports, prepared by outside consultants or advisors.

10. All internal reports that were prepared when analyzing the purchase or construction of the plant addition.

11. Where applicable, copies of contracts that are expected to be assumed following close of acquisition.

12. Where applicable, copies of all contracts between the utility and the seller or operator of the plant addition.

13. Where applicable, a history of the plant addition to be acquired including financial and performance characteristics for the past five years, or from the start of commercial operation, whichever is less.

14. Where applicable, information on the utility's understanding of the reasons why the seller is selling the facility.

15. Where applicable, information on the seller's book value of the plant.

16. An indication whether the seller will allow interested persons who have signed a confidentiality agreement with the utility access to the seller's books and records for audit, and what restrictions may apply to such access.

B. Financial and Revenue information.

1. Provide information of the revenues, costs and benefits arising from the plant addition, identifying any limits and conditions on forecast information/calculations.

2. Information on the net revenue impact of bringing the plant online and operating the plant within the utility's system compared to operations without the plant.

3. Justification for any acquisition premium the utility plans to include in rates and recover from ratepayers.

C. Capital cost, rate base and jurisdictional allocation information.

1. Information on how the utility plans to finance the construction or acquisition of the plant addition. This is to include the timing and amount of any equity, debt, or other security issuances and any documents to, or received from, any investment bankers or other entities regarding the issuance of any securities connected with the plant addition.

2. Information indicating whether the utility has discussed the plant addition with any rating agencies and provide any reports or rating agencies provided with respect to the plant addition. If not, indicate when it plans to discuss the plant addition with any rating agency.

3. Information on how much of the purchase price or construction costs the utility intends to place into rate base.

4. Information showing the amount and relating to any analysis of AFUDC associated with the plant addition.

5. Information on the utility's anticipated jurisdictional allocation for the plant addition and any change in allocation factors and other plant, revenue and expense/cost allocations arising from the plant addition.

D. Cost and Operating Expenses Information.

1. A complete analysis of all costs associated with constructing, acquiring and operating the plant for which the utility will seek recovery from Utah ratepayers and identify any costs for which no recovery will be sought from Utah ratepayers.

2. Information on all clearances, permits or other government regulatory authorizations necessary, to be modified and completed for the plant and their associated costs.

3. Information on any liquidated damages clause and early termination fees, penalties, or other expenses which may be incurred if the plant is not completed or acquired.

4. Information on whether that are any integration costs or fees (transmission, pipeline, etc.).

5. Information on any costs analysis analyzing bringing the plant online.

6. Information on how the plant addition will change and the amount of change on the utility's Operation and Maintenance costs.

7. All operating cost analyses that have been completed related to the plant addition.

8. The planned accounting treatment for the plant, including the proposed journal entries or other accounting entries for such planned accounting treatment.

9. A description of and the amounts for overhead, closing, contingent or any other costs for which the utility expects it will ask recovery as a result of the acquisition.

E. For an electrical corporation, the following Net Power Costs information.

1. The impacts of the plant addition on any utility power cost and production cost dispatch models. If any models are revised to accommodate the plant addition, the revised models will be available to the parties participating in the application proceeding.

2. A net power cost study (NPC) in the utility's production cost dispatch model that documents changes from previous net power cost estimates. All relevant workpapers and documentation to allow any other person to perform an independent analysis and verification of the NPC will be provided.

3. Show how the plant addition impacts planned outages, unplanned outages, and maintenance at the utility's generation resources.

R746-700-40. Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-40 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information

1. Historical results of operations information consisting of actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period used as a basis for the test period.

2. Adjusted results of operations for the same period. These adjustments shall include, but are not limited to,

normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application.

3. Description and details for all additional adjustments necessary to arrive at the test period used in the general rate case application.

4. A description of any significant changes in accounting policies or procedures for the 12-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a future test period is used, any future changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

5. Information giving a fully referenced Part 64 and, where available, a Part 36 allocation. If no Part 36 allocation information is available, the utility shall provide an alternative permitting comparable cost of service allocations. Fully referenced means that sources of all total amounts are indicated and that source documents are included in the filed information. The names and sources of allocators to determine jurisdictional or non regulated portions shall be included in lines with the allocated amounts. The Part 64 allocation shall provide full allocation of all joint costs incurred by the utility for both non-regulated and regulated activities and affiliated companies.

6. A copy of each adjusting journal entry made with supporting documentation in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. The utility will identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

7. A copy of management letters received from the utility's outside auditors or responses to those management letters for the time period of the beginning of the historical period to the date of filing of the application.

8. A listing of internal audits, and copies thereof, conducted by or for the Company or its parent for the time period beginning with the historical period to the date of the application, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs are allocated or directly charged to Utah regulated operations included in the general rate case application.

9. Beginning with the start of the historical period, provide the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status. Include a personnel organization chart with names that provides line of authority and reporting for board members, management and mid-management including joint responsibilities for non-regulated affiliate responsibilities.

10. A detailed description of corporate restructurings and changes in affiliate relationships since the prior general rate case and also describe changes in the corporate and affiliate relationships between the historical period and the end of the test period used in the application.

11. Beginning with the two years prior to the historical period through the date of the application, provide the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same period, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

12. A detailed description of any changes in the utility's collection policies or write-off policies since the last general rate case.

13. A list of penalties and fines in the historical period and the test period and indicate in which accounts the associated amounts are included.

14. Description of all calculations and all supporting spreadsheets and explicit data source information for all numbers in the narrative portion of the application or any testimony and exhibits included with the application.

B. Tax adjustments

1. An exhibit explaining procedures used to calculate test period tax adjustments.

2. An adjustment summary for tax expenses for normalized results of operations.

3. Information explaining every adjustment that is done to test period tax expense and that is shown in the adjustment summary. Adjustments will be in "top sheet" form.

4. A list of, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

5. A copy of the current tax sharing agreement in which the company participates.

6. List all property held for future use included in rate base. Listed property shall not include any item included in plant in service in rate base and the pro forma balance. The description shall include:

a. Location of property;
b. Date of acquisition;
c. Original cost;
d. Accumulated depreciation;
e. net original cost;
f. Planned or expected in-service date; and
g. Planned or expected use of property.

7. Copies of supporting work papers on the account Property Held for Future Use which shall include an explanation of all additions and transfers, including:

a. Description of property;
b. Description of transaction; and
c. Amount.

C. An applicant need not file the following information or documents with a general rate case application, but shall have such information and documents available for delivery and shall include a certification with its application that this information and these documents have been prepared and are available at the time it files its general rate case application. Contemporaneously with the filing of an application, an applicant shall also deliver this information and these documents to the Division of Public Utilities.

1. The financial audit work papers for the most recent completed financial audit conducted by the utility's independent auditors. The utility will provide a letter authorizing the external audit firm to meet with requesting parties to discuss work papers with them and allow parties to make copies of selected work papers.

2. Any revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

3. Copies of the most recent State and Federal income tax returns in which the utility participated.

R746-700-41. Cost of Service and Rate Design Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Utah Class Cost of Service Study or alternative comparable class cost of service information based on the test period with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

R746-700-50. Information for a General Rate Case Application for a Water Corporation.

An applicant shall be in compliance with the reporting requirements of R746-400 prior to submitting an application for a general rate case. If the applicant is not in compliance with that rule, the applicant shall first submit any missing reports prior to submitting an application for a general rate case. An applicant submitting a general rate case application shall provide the following information with the application:

A. General Information:

1. Most recent Division of Drinking Water certification/report.

2. Certificate of Public Convenience and Need Number granted by the Commission and its date.

3. Date the utility started operation.

4. The number of connections approved and current area served, which may be shown by service area map.

5. Ownership and officers.

6. Associated companies (if any).

7. A copy of its current tariff.

B. Engineering Information.

1. Source of water supply

2. Information for all Wells

3. Mains and meters information

4. Reservoirs information

5. Storage capacity

6. Service deficiencies and remedies

7. Service quality

8. Additions or improvements in the last five years

9. Any anticipated additions or improvements

10. Efforts to encourage conservation

C. Customer Connection Information

1. Each connection identified by unique lot number or address

2. The date first put into service

3. Whether metered or unmetered.

4. Whether classified as residential or commercial

5. The water usage per month or billing cycle, showing minimum and overage gallons used

6. The amount billed per month or billing cycle

7. The anticipated growth, showing minimum and overage gallons used

8. Water usage and billings projected for the next three years

9. Information on any secondary/irrigation water system (the same information as C. 1, 2, 5, 6, 7 and 8 above).

10. Identification whether secondary water is distributed through the culinary system.

D. Accounting and Financial Data, which shall include the prior two complete years and current up to the date of general rate case application, unless otherwise specified:

1. Identification (contact information) for any accountant used by the utility.

2. Copies of the General Ledger.

3. Copies of the Balance Sheet

4. Copies of the Income Statement

5. Pro Forma Income Statements, categorized by the National Association of Regulatory Utility Commissions, NARUC, System of Accounts, to include:

a. the prior two years of revenues and expenses, and

b. the projected revenues and expenses for the next three years, to include the Company's anticipated growth rate and requested rate increase.

6. A copy of or the utility's check register

7. Billing documentation/reports, tied back to the tariff rates

8. Information on the utility plant, including, but not limited to:

a. Acquisition date,

b. Acquisition price or cost,

c. Salvage value,

d. Expected useful life,

e. Annual depreciation amount per asset,

f. Accumulated depreciation per asset and reconciled to the total accumulated depreciation amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments),

g. If an asset was donated, the amount applied to Contribution in Aid of Construction per asset,

h. If donated, the accumulated amortization of the Contribution in Aid of Construction per asset and reconciled to the total accumulated amortization amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments), and

i. Projected future asset purchases for the next three years, providing the estimated acquisition date and price.

9. Copies of tax returns for the prior two complete years,

10. Information on all Notes Payable, Loans, and other Obligations, This will include all outstanding and those retired within the past two years, including:

a. Interest rate,

b. Beginning date,

c. Date of last scheduled payment (the Loan pay-off date), and

d. Amount of payment

E. Customer Notice Information

1. A copy of any notice sent to customers notifying them that the utility is seeking a rate increase.

R746-700-51. Cost of Service and Rate Design Information for a General Rate Case Application for a Water Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Class Cost of Service Study, if one has been prepared, based on the test period with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

KEY: utilities, filings, applications, major plant additions
September 23, 2009 54-7-12(1)(b)(ii)
Notice of Continuation September 22, 2014 54-7-13.4(1)(a)(ii)

R895. Technology Services, Administration.
R895-7. Acceptable Use of Information Technology Resources.
R895-7-1. Purpose.

Information technology resources are provided to state employees to assist in the efficient day to day operations of state agencies. Employees shall use information technology resources in compliance with this rule.

R895-7-2. Application.

All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education and the Board of Regents and institutions of higher education, shall comply with this rule.

R895-7-3. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Utah Technology Governance Act, Utah Code, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code.

R895-7-4. Employee and Management Conduct.

(1) Providing IT resources to an employee does not imply an expectation of privacy. Agency management may:

(a) View, authorize access to, and disclose the contents of electronic files or communications, as required for legal, audit, or legitimate state operational or management purposes;

(b) Monitor the network or email system including the content of electronic messages, including stored files, documents, or communications as are displayed in real-time by employees, when required for state business and within the officially authorized scope of the person's employment.

(2) An employee may engage in incidental and occasional personal use of IT resources provided that such use does not:

(a) Disrupt or distract the conduct of state business due to volume, timing, or frequency;

(b) Involve solicitation;

(c) Involve for-profit personal business activity;

(d) Involve actions, which are intended to harm or otherwise disadvantage the state; or

(e) Involve illegal and/or activities prohibited by this rule.

(3) An employee shall:

(a) comply with the Government Records Access and Management Act, as found in Section 63G-2-101 et seq., Utah Code, when transmitting information with state provided IT resources.

(b) Report to agency management any computer security breaches, or the receipt of unauthorized or unintended information.

(4) While using state provided IT resources, an employee may not:

(a) Access private, protected or controlled records regardless of the electronic form without data owner authorization;

(b) Divulge or make known his/her own password(s) to another person;

(c) Distribute offensive, disparaging or harassing statements including those that might incite violence or that are based on race, national origin, sex, sexual orientation, age, disability or political or religious beliefs;

(d) Distribute information that describes or promotes the illegal use of weapons or devices including those associated with terrorist activities;

(e) View, transmit, retrieve, save, print or solicit sexually-oriented messages or images;

(f) Use state-provided IT resources to violate any local, state, or federal law;

(g) Use state-provided IT resources for commercial purposes, product advertisements or "for-profit" personal activity;

(h) Use state-provided IT resources for religious or political functions, including lobbying as defined according to Section 36-11-102, Utah Code, and rule R623-1;

(i) Represent oneself as someone else including either a fictional or real person;

(j) Knowingly or recklessly spread computer viruses, including acting in a way that effectively opens file types known to spread computer viruses particularly from unknown sources or from sources from which the file would not be reasonably expected to be connected with;

(k) Create and distribute or redistribute "junk" electronic communications, such as chain letters, advertisements, or unauthorized solicitations;

(l) Knowingly compromise the confidentiality, integrity or availability of the State's information resources.

(5) Once agency management determines that an employee has violated this rule, they may impose disciplinary actions in accordance with the provisions of DHRM rule R477-11-1.

KEY: information technology resources, acceptable use
September 11, 2014 63F-1-206
Notice of Continuation April 15, 2014

R916. Transportation, Operations, Construction.
R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
R916-5-1. Purpose.

The purpose of this rule is to comply with Section 72-6-107.5 and establish the requirements and procedures a contractor, subcontractor, consultant and subconsultant must follow to demonstrate they will maintain an offer of health insurance as required by Section 72-6-107.5. This rule also establishes penalties for intentional violations of Section 72-6-107.5.

R916-5-2. Authority.

This rule is authorized under Section 72-6-107.5 which requires the Utah Department of Transportation to make rules related to health insurance in certain design and construction contracts.

R916-5-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-107.5

(2) In addition:

(a) "Executive Director" means the Executive Director of the Department of Transportation, including, unless otherwise stated, the Executive Director's duly authorized designee.

(b) "Department" means the Department of Transportation established pursuant to Section 72-1-201.

(c) "Employee(s)" is as defined in 72-6-107.5 and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than that the use of the term employee for purposes of State of Utah Workers' Compensation laws.

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

R916-5-4. Applicability of Rule.

(1) Except as provided in Subsection (2) below, this rule applies to all contracts entered into by the Department on or after July 1, 2009, and is applicable to a prime contractor if its contract is in the amount of $1,500,000 or greater, and to a subcontractor if its subcontract is in the amount of $750,000 or greater.

(2) This rule does not apply if:

(a) the application of this rule jeopardizes the receipt of federal funds;

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

(c) the contract is an emergency procurement; or

(d) the ule is in conflict with federal law.

(3) This rule does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R916-5-4(1).

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

R916-5-5. Contractors or Consultants to Comply with Section 72-6-107.5.

All contractors, subcontractors, consultants or subconsultants that are subject to the requirements of Section 72-6-107.5 shall comply with all the requirements, and be subject to the penalties and liabilities of Section 72-6-107.5.

R916-5-6. Not Basis for Protest, Suspension, Disruption, or Termination Design or Construction.

(1) The failure of contractors, subcontractors, consultants, or subconsultants to comply with Section 72-6-107.5:

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

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

(2) A contractor who is unable to demonstrate compliance upon submission of the executed contract, signed by the successful bidder, may be declared non-responsive and the Department may award the contract to the next lowest responsive bidder.

(3) A consultant who is unable to demonstrate compliance within 14 calendar days of being ranked first during the consultant selection process, may be declared non-responsive and the Department may enter negotiations with the new first-ranked responsive consultant.

R916-5-7. Requirements and Procedures a Contractor or Consultant Must Follow.

(1) A contractor, or consultant, subcontractors or subconsultants must comply with the following requirements and procedures, and demonstrate, no later than the time of execution of the contract, compliance with Section 72-6-107.5:

(a) by providing a written certification to the Executive Director that the contractor, consultants, subcontractors, and subconsultants have and will maintain for the duration of the contract an offer of qualified health insurance coverage for the employees who live and/or work within the State, along with their dependents; and

(b) the contractor or consultant shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors or subconsultants at any tier that are subject to the requirements of this rule.

(2) Recertification. The Executive Director shall have the right to request a recertification by the contractor or consultant by submitting a written request to the contractor or consultant, and the contractor or consultant shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor or consultant be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection (1) of 72-6-107.5 is met by the contractor or consultant if the contractor or consultant provides the Executive Director with a written statement of actuarial equivalency from either the Utah Insurance Department, an actuary selected by the contractor or the contractor's insurer, an actuary selected by the consultant or the consultant's insurer, or an underwriter who is responsible for developing the employer groups premium rates.

(a) For purposes of this rule, actuarial equivalency, or greater is achieved by meeting or exceeding the requirements of qualified health insurance coverage as defined in Subsection 72-6-107.5(1)(c). The benchmark plan referred to in Subsection 72-6-107.5(1)(c), may be found at: http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf.

(4) The health insurance must be available upon the first day of the calendar month following the initial 90 days from the date of hire.

(5) Consultant Compliance Process. Consultants who are subject to this rule must demonstrate compliance with this rule in their initial Financial Screening Application. The consultant's will then be required to demonstrate the offer of health insurance that meets the requirements outlined in Section 72-6-107.5. During the procurement process and no later than the execution of the contract with the consultant, the consultant will confirm the prime is still in compliance with this rule and

the subconsultants of the consultant will certify through their prime consultant they meet the requirements of this rule. The written contract will contain a provision where the consultant confirms compliance with this rule by both the consultant and applicable subconsultants.

(6) Contractor Compliance Process. Contractors who are subject to this rule must demonstrate compliance with this rule. When a contract is written, contractors will confirm the prime contractor is in compliance with this rule and their subcontractors will certify through their contractor that they meet the requirements of this rule. The written contract shall contain a provision where the contractor confirms compliance with this rule by both the contractor and applicable subcontractors.

(7) Must be in Compliance at the Time the Contract is executed. Notwithstanding any prequalification of a contractor, subcontractor, consultant or subconsultant that is subject to this rule, the contractor subcontractor, consultant or subconsultant must agree to the language in the executed contract that requires the contractor to be in compliance with this rule at the time of the execution of the contract and throughout the duration of the contract.

R916-5-8. Department Hearing and Penalties.

(1) Hearing. Any hearing regarding the failure to comply with this rule shall be held in accordance with the Utah Administrative Procedures Act and Rule 907-1 unless specifically stated otherwise in a governing statute.

(2) Penalties. The penalties that may be imposed if a contractor, consultant, subcontractor or subconsultant, at any tier intentionally violates this rule include:

(a) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation, regardless of which tier the contractor or subcontractor is involved;

(b) a six-month suspension of the contractor, subcontractor, consultant or subconsultant from entering into future contracts with the state upon the second violation, regardless of which tier the contractor or subcontractor is involved;

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

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

(e) A prime contractor or consultant will not be subject to penalties for the failure of a subcontractor or subconsultant to meet the requirement of maintaining their offer of qualified health care coverage.

R916-5-9. Does Not Create Any Contractual Relationship With Any Subcontractor or Subconsultant.

Nothing in this rule shall be construed as to create any contractual relationship whatsoever between the Department or the State with any subcontractor or subconsultant at any tier.

KEY: contracts, health insurance, health insurance in state contracts, health reform
October 11, 2011 72-6-107.5
Notice of Continuation September 12, 2014

R982. Workforce Services, Administration.
R982-401. Energy Assistance: General Provisions.
R982-401-1. Purpose.

The Home Energy Assistance Target (HEAT) program serves to provide assistance in meeting home energy costs for certain low-income families and individuals.

R982-401-2. Authority.

These rules are authorized by Section 35A-8-1403.

R982-401-3. Definitions.

The following definitions apply to R982-401-1 through R982-401-8:

(1) "Applicant" means any person requesting assistance under the program discussed.

(2) "Assistance" means payments made to individuals under the program discussed.

(3) "Assistance unit" or "household" means any individual or group of individuals who are living together as one economic unit and for whom residential heating is customarily purchased in common or who make payments for heat in the form of rent.

(4) "Department" means the Department of Workforce Services.

(5) "Recipient" or "client" means any individual receiving assistance under the program discussed.

(6) "Confidential information" means information that has limited access as provided in Chapter 63G-2.

(7) "HEAT" means Home Energy Assistance Target program.

(8) "IRS" means Internal Revenue Service.

(9) "Moratorium" means a period of time in which involuntary termination for nonpayment by residential customers of essential utility bills is prohibited.

(10) "Vulnerability" means having to pay a home heating cost.

R982-401-4. Client Rights and Responsibilities.

(1) Any client may apply or reapply for HEAT assistance any time during the HEAT season, which runs from November 1 to April 30 or until funds run out whichever comes sooner, by completing and signing an application and turning it in at the the applicant's local HEAT office.

(2) If the client needs help to apply, help will be given by the local HEAT office staff. Clients will be notified of eligibility decisions in writing and will be provided with a reason if denied.

(3) The client's home will not be entered without permission.

(4) Clients may contact a supervisor or manager to resolve a dispute.

(5) Clients have the right to have confidential, personal information safeguarded.

(6) Anyone may look at a copy of the program manuals located at any local HEAT office or the State energy Assistance Lifeline web site.

(7) The client must give complete and correct information and verification.

(8) The client must immediately report any address change while under the protection of the moratorium.

(9) The client is responsible for repaying any overpayments of assistance.

R982-401-5. Information.

(1) The department will comply with with Chapter 63G-2.

(2) Client may review and copy anything in their case record unless it is confidential or information obtained by a third party.

(a) The Client requests for release of information shall be in writing and include:

(i) the date;

(ii) the name of the person receiving the information;

(iii) the time period covered by the information.

(b) Information classified as confidential shall not be used in a hearing.

(c) Information classified as confidential shall not be used to close, deny or reduce benefits.

(d) Clients may request a copy of information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

(e) The client cannot take the case record from the office.

(3) Releasing information to sources other than the client.

(a) If the client wants information released to an authorized representative, the representative must be designated in writing by the client.

(b) Information will not be released when it is to be used for a commercial or political purpose.

(c) The client's permission will be obtained before sharing any information regarding their case record.

(i) Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

(ii) Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

(4) Information released without the client's permission.

(a) Information, with the exception of confidential information, may be released without the client's permission when that information is to be used in:

(i) The administration of any federal or state means-tested program.

(ii) Any audit or review of expenditures in connection with the HEAT or Moratorium program.

(iii) Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

(5) If a case file is subpoenaed by an outside source, the State HEAT Program Manager is contacted immediately. The State Program manager will consult with the legal counsel for the Housing and Community Development Division (HCD).

R982-401-7. Hearings.

Department rules R986-100-122 through R986-100-133 and rule R986-100-135 apply to the HEAT program including any alleged overpayment except all requests for a fair hearing on a HEAT issue must be in writing.

KEY: client rights, hearings, confidentiality of information
October 1, 2014 35A-8-1403

R982. Workforce Services, Administration.
R982-402. Energy Assistance Programs Standards.
R982-402-1. Opening and Closing Dates for HEAT Program.

(1) Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.

(2) The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. If federal LIHEAP funds are yet available, the program may be extended beyond April 30 and through to September 30 with the approval of the State HEAT Program Manager. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

R982-402-2. U.S. Residence.

(1) To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:

(a) Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.

(b) Be lawfully admitted into the US for permanent residence as evidenced by a valid U. S. Citizenship and Immigration Services (USCIS) Permanent Resident Card (form I-551).

(c) Be lawfully admitted into the US with a valid USCIS Employment Authorization Card (form I-766) with one of the following categories: A3, A4, A5, A10, C11, C25, RE1, RE2, RE3, RE4, RE5.

(d) Be lawfully admitted into the US with a valid USCIS Arrival/Departure Record (Form I-94) with a Customs and Border Protection endorsement stamp marked with one of the following: I-551, 203A7, 207, 208, 212D5, RE1, RE2, RE3, RE4, RE5.

(e) Be lawfully admitted into the US with a valid USCIS Approval Notice (Form I-797A) issued with one of the following classes: I-551, 203A7, 207, 208, or 212D5, RE1, RE2, RE3, RE4, RE5.

(2) Persons not eligible to participate in the HEAT program are:

(a) Persons who hold a USCIS 1-94 who are admitted as temporary entrants.

(b) Persons who have none of the documents listed in subsection 1 of this section or whose documents are expired.

R982-402-3. Utah Residence.

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

R982-402-4. Local Residence.

(1) Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

(2) Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

(3) Residents living on the Navajo Indian Reservation in San Juan County may apply for utility assistance through the Navajo Tribe or through the State HEAT Program. They cannot receive assistance through both programs in the same program year.

R982-402-5. Vulnerability.

(1) Households that are responsible for paying home heating costs are considered vulnerable.

(2) The following households are considered responsible for home heating costs:

(a) Households who are presently paying heating costs directly to energy suppliers on currently active accounts.

(b) Households who are currently paying energy costs indirectly through rent.

(3) Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

(a) Nursing homes;
(b) Hospitals;
(c) Prisons and jails;
(d) Institutions;
(e) Alcoholism and drug treatment centers;
(f) Group homes administered under a contract with a government agency or administered by a government agency;
(g) Households not connected to a heat source;
(h) Households whose utility bills are paid regularly by an outside party;
(i) Automobiles;
(j) Tents.

R982-402-7. Social Security Numbers.

(1) Verification of Social Security Numbers is required for all household members.

(2) There are four ways to provide a correct SSN. The client can submit one of these three documents.

(a) An official SSN card
(b) Official documents from Social Security Administration including award letters, benefit checks or a Medicare card
(c) An SSA receipt form 5028 or 2880.
(d) Official document from another government agency.

R982-402-8. Eligible HEAT Household.

(1) Household members need not be related.

(2) Multiple dwellings including duplexes and apartment buildings are considered separate households.

R982-402-9. Age and Emancipation.

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

R982-402-10. Weatherization Referrals.

Participation in the weatherization program is not a condition of eligibility for HEAT.

R982-402-11. HEAT Crisis Assistance.

(1) A crisis exists when a household faces a sudden or unexpected event beyond its control resulting in the inability to pay household heating costs. A crisis may be caused by:

(a) unexpected increase in medical costs;
(b) sudden loss of job, public benefits, or other income;
(c) malfunction of heating equipment;
(d) other circumstances that may pose a potential health and/or safety threat

(2) Circumstances that do not necessarily qualify as a crisis include:

(a) chronic non-payment of utility/fuel costs
(b) unexplained or excessively high utility/fuel costs
(c) payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property
(d) other situations which are not sudden, unexpected, or beyond the control of the household.

(3) To be eligible for HEAT crisis assistance, a household must be eligible for HEAT during the same HEAT program year.

(a) If the local office determines that a household is in a crisis situation, is eligible to receive HEAT crisis assistance and has written notice from the Division of Public Utilities that the residence has "life supporting equipment", HEAT crisis assistance will be provided within 18 hours. Regular HEAT crisis assistance will be provided within 48 hours of eligibility determination.

(b) The HEAT supervisor or designee must approve all expenditures.

(c) HEAT payments are issued to the vendor. If propane or wood is used as a heating source, or if the state does not have a contract with the vendor, the percentage of benefit attributable to that heating source can be paid directly to the client.

(d) HEAT crisis payments are limited to a maximum of $500 per household per utility (e.g. gas and electric) per HEAT program year unless prior approval for an amount larger than $500 per utility is obtained from the supervisor or state office.

R982-2-12. Supplemental Programs.

Households that qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

R982-402-13. Security Deposits.

(1) A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.

(2) If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

R982-402-14. Consumer Complaints.

(1) Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.

(2) Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

R982-402-15. Credit Balances on Utility Accounts.

(1) If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

(2) Utility companies may refund credit balances to clients who still reside in Utah if a new Utah address is provided within 30 days after termination of service. Otherwise, the credit balance shall be refunded to the HEAT Program.

(3) In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

(4) If the client fails to give the disconnecting utility company the information necessary to transfer or refund the credit balance, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

(5) Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

KEY: energy assistance, residency requirements, opening and closing dates, HEAT
October 1, 2014 35A-8-1403

R982. Workforce Services, Administration.
R982-403. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.
R982-403-1. Energy Assistance Income Standards.

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household. Income must be at or below 150% of the federal poverty level to qualify for HEAT assistance.

R982-403-2. Countable Income.

Countable income is gross income minus exclusions, disregards, and deductions.

R982-403-3. Unearned Income.

(1) Countable unearned income is cash received by an individual for which no service is performed.

(2) Sources of unearned income include the following:

(a) Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;

(b) Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;

(c) Unemployment Compensation;

(d) Strike or union benefits;

(e) Veteran's benefits;

(f) Child support and alimony;

(g) Veteran's Educational Assistance intended for family members;

(h) Trust payments, withdrawals, and/or dividends received on a regular basis;

(i) Tribal fund gratuities unless excluded by law.

(j) Money from sales contracts and mortgages;

(k) Personal injury settlements;

(l) Financial payments made by the Department of Workforce Services;

(m) Income from Rental Property. If the client also manages the property, the income is earned;

(n) Temporary Assistance to Needy Families (TANF);

(o) Emergency Work Program (EWP);

(p) Work allowances;

(q) Foster Care Payments;

(r) Severance pay paid out weekly;

(s) 401K payments;

(t) Retirement income;

(u) Payments received or drawn down from assets like a reverse mortgage or withdrawals from accounts;

(v) Gifts received, or payments made on a client's behalf on a regular basis.

R982-403-4. Earned Income.

(1) Earned income is income in cash or in kind received by an individual for which a service is performed.

(2) Sources of earned income include the following:

(a) Wages, including military base pay;

(b) Salaries;

(c) Commissions;

(d) Rent amount, when client works in return for rent;

(e) Monies from self-employment including baby-sitting;

(f) Tips;

(g) Sale of livestock and poultry;

(h) Work Study;

(i) Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;

(j) Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans;

(k) Income from rental property if client also manages the property.

R982-403-5. Income Exclusions.

The income listed below is not counted when determining eligibility:

(1) Earned income of an unemancipated household member;

(2) Cash over which the household has no direct control;

(3) Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities;

(4) Reimbursements for incurred medical expenses;

(5) Bona fide loans. A bone fide loan is a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(6) Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the Foster Grandparent Program;

(7) Incentive and training expenses paid by the HEAT Self Sufficiency program.

(8) Earned Income Tax Credit;

(9) Financial payments from Workforce Investment Act;

(10) Value of Food Stamps;

(11) Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt;

(12) Interest or dividend income;

(13) Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE;

(14) Church cash assistance and voluntary cash contributions by others unless received on a regular basis;

(15) Rental subsidies and relocation assistance;

(15) Utility subsidies;

(16) The full military pay for an active duty soildier not in the home. However, any amount taken out of his or her military pay and sent home for the family's support is counted; and

(17) Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9); Public Law 92-203, Public Law 101-201 or Public Law 101-239(10405), Public Law 100-383, Public Law 101-426, or by Public Law 100-707.

R982-403-6. Income Disregard.

(1) 20% of earned income, including self-employment earned income, will be disregarded. "Disregard" means a portion of income that is not counted.

(2) For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

R982-403-7. Income Deductions.

(1) A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

(a) The client must verify the payment was made directly to a medical provider by a member of the household, for a member of the household in the month prior to the month of application and that they will not be reimbursed by a third party.

(b) Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

(2) A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

(a) The client must verify the payment was actually made directly to the custodial adult or through the court.

(b) Payments in lieu of child support and alimony, including car payments or mortgage payments, are deductible.

R982-403-8. Self-Employment Income.

(1) A self-employed person is someone who earns income directly from his or her own business, trade, or profession.

(2) Self-employment income will be determined by using the previous year's tax return or as follows:

(a) All gross self-employment income is counted, including capital gains. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.

(b) The cost of doing business will be deducted.

(i) Allowable business costs include:

(A) labor;

(B) stock;

(C) raw materials;

(D) seed and fertilizer;

(E) interest paid toward the purchase of income producing property;

(F) insurance premiums;

(G) taxes paid on income producing property;

(H) Transportation costs will be allowed only if the person must move from place to place in the course of business.

(ii) The following items will not be allowed as business expenses:

(A) payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;

(B) net losses from previous periods;

(C) federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses;

(D) depreciation.

R982-403-9. HEAT Financial Eligibility and Payment Determination.

All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

KEY: energy assistance, self-employment income, income eligibility, payment determination
October 1, 2014 35A-8-1403

R982. Workforce Services, Administration.
R982-405. Energy Assistance: Program Benefits.
R982-405-1. Program Benefits.

Each household may apply for HEAT Crisis assistance up to a maximum of $500 per utility (two separate utilities) per program year - October 1 through September 30. Any amount that adds up over $500, whether it is made through a combination of HEAT Crisis payments, or one crisis payment throughout the year must get prior approval from the State.

R982-405-2. Standard Payment Levels.

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

R982-405-3. Benefit Payments.

Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

R982-405-4. Split Payments.

(1) If the client has more than one utility provider and the State of Utah only has a contract with one of the utility providers, up to 50% of the HEAT payment may be made to the client.

(2) Payment disbursements may be split only in the percentages listed below:

(a) 100%
(b) 50%/50%
(c) 75%/25%

KEY: energy assistance, benefits
October 1, 2014 35A-8-1403

R982. Workforce Services, Administration.
R982-407. Energy Assistance: Records and Benefit Management.
R982-407-1. Records Management.

(1) Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office or in the SEALWorks computer system. Every person who completes an application shall have a case record.

(2) HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

R982-407-2. Notification.

(1) The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

(2) Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

R982-407-3. Checks.

(1) All HEAT payments to clients or vendors are issued by check.

(2) If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

(3) Lost or stolen HEAT checks.

(a) The client must report a lost or stolen check within one year of the issuance date. A check that is reported lost or stolen more than one year after the issuance date will not be replaced.

(b) The client must complete and sign a Lost Check Replacement Form and send it to the State HEAT Office for processing in order to have a check re-issued.

KEY: energy assistance, benefits, government documents, state HEAT office records
October 1, 2014 35A-8-1403

R982. Workforce Services, Administration.
R982-408. Energy Assistance: Special State Programs.
R982-408-1. Moratorium.

The department shall require compliance with Section 35A-8-1501.

(1) The moratorium program protects eligible persons from winter utility shut offs.

(2) A household can apply for moratorium protection only one time per utility per program year.

(3) The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

(4) The moratorium applicant must:

(a) Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

(b) Be living at the address where Moratorium protection is needed;

(c) Have a termination notice from the utility company or have been refused service if the utility is not active;

(d) Have been approved for HEAT;

(e) Have applied for assistance through the Salvation Army; and

(f) Have made a good faith effort to pay their utility bill on a consistent basis during the moratorium

(5) In addition the applicant must meet at least one of the following criteria:

(a) have a gross household income in the month of, or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit;

(b) have suffered a medical or other emergency in either the month of application or the month prior to the month of application;

(c) have suffered a loss of employment in either the month of application or the month prior to the month of application; or

(d) have suffered a 50% drop in income in either the month of application or the month prior to the month of application.

(5) Required Verification

(a) All factors of eligibility must be verified.

(b) It is the applicant's responsibility to obtain acceptable verification.

(c) If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

(6) Good Faith Payment Effort

(a) Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

(b) If the home is heated by electricity the household must pay the utility company at least 10% of the gross income received in the month prior to the month of application.

(c) The minimum allowed monthly payment is $5.00 even if the client has no income in the month prior to the month of application.

(7) In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

(8) For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

(a) When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

(b) The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

(c) When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

(9) Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

KEY: energy assistance, energy industries
October 1, 2014 35A-8-1403

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;
(c) the client is participating in FEPTP; or
(d) the client is an undocumented alien parent.

(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, undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:
(i) birth certificates;
(ii) medical records;
(iii) Department records;
(iv) records from another state or federal agency;
(v) court records; or
(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be

significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The 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 determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating 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 exception 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 exception 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) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end.

(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 extension 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 exception under subsections (1) or (2) of

this section, an exception 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 exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception 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 or extension listed above. Both parents need not meet the same exception or extension.

(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 for an exception 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 and extensions 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 subsequence occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (2) 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:

TABLE

Household Size	Payment Amount
1	$288
2	$399
3	$498
4	$583
5	$663
6	$731
7	$765
8	$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving

financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or earned and unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-248. 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
October 1, 2014 35A-3-301 et seq.
Notice of Continuation September 8, 2010

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client;
(g) a copy of the two party check on a need to know basis;
(h) the month the client is scheduled for review or reestablishment,
(i) the date the client's application was received; and
(j) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.
(9) Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

R986-700-704. Establishment of Paternity.
The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.
(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:
(a) providers regulated through Department of Health Child Care Licensing (CCL):
(i) licensed homes;
(ii) licensed child care centers; and
(iii) homes with a residential certificate.
(b) license exempt providers who are not required by law to be licensed and are either;
(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL and have at least one person who is trained in first aid and infant/child CPR who must be with the children at all times including when the children are being transported in a vehicle. Current verification of first aid and CPR training must be provided to CCL prior to Department approval; or
(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.
(2) The following providers are not eligible for receipt of a CC payment:
(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;
(b) a sibling of the child living in the home can never be approved, even for a special needs child;
(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;
(d) undocumented aliens;
(e) persons under age 18;
(f) a provider providing care for the child in another state;
(g) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run and the provider is otherwise eligible including meeting the requirements of background checks under R986-700-753;
(h) any provider disqualified under R986-700-718;
(i) a provider who does not cooperate with a Department investigation of a potential overpayment;; or
(j) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.
(3) FFN providers will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:
(a) complete, sign and submit an application to CCL;
(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;
(c) pass a home inspection as provided in Department policy;
(d) complete an infant/child CPR training;
(e) complete first aid training; and,
(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.
(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.
(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC provider must complete and submit a renewal application, together with any information, verifications or releases required or requested by the Department or CCL, 30 calendar days before the expiration date of the current approval.
(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.
(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-1-123 et seq.

R986-700-706. Provider Rights and Responsibilities.
(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.
(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.
(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.
(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.
(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.
(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.
(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.
(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.
(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.
(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during transitional child care. Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must complete the application process and sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense. Providers that completed the application process prior to August 1, 2011 need to provide additional information to the Department contractor. If the provider does not provide this additional information, the provider will not be eligible for CC payments as of January 1, 2012.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(3) If the client was at fault in the creation of an overpayment for any reason other than an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or

ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of seven hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a notice of agency action to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the notice of agency action, no further action will be taken on that overpayment. If the provider does not repay the overpayment in full within six months of the notice of agency action the overpayment will become an IPV and the provider will be disqualified as a provider for one year;

(b) if the provider removes funds in excess of those authorized by the Department a subsequent time, there is no outstanding balance on any previous provider overpayment and the provider has never been disqualified, the subsequent overpayment is treated as a first overpayment. The provider will be given six months from the notice of agency action to repay the overpayment under these circumstances. If the subsequent overpayment is not repaid in full within six months of the notice of agency action, the provider will be disqualified for one year. If the provider was previously disqualified, the provider will be given 30 days from the notice of agency action to repay all outstanding overpayments in full, including all prior and subsequent overpayments. If the overpayment/s is/are not paid within 30 days, the provider will be disqualified for a period of two years. If the provider has never been disqualified but has a balance due on a previous overpayment, the provider will be given six months to repay the overpayment but may be disqualified if the first overpayment is not paid in time.

(c) a CC provider that removes unauthorized funds after having been disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(b) of this subsection will be given 30 days from the notice of agency action to repay all outstanding overpayments in full. If the overpayment/s is not paid in full within 30 days, the provider will be permanently disqualified.

(d) each time a provider removes unauthorized funds is a separate offense even if the removal occurs on the same day. If, for instance, a provider removed funds from three separate

clients on the same day, it would be three offenses. Likewise, if the provider removed unauthorized funds from the same client three times in different months, it would be three offenses.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within the time limits specified in subsection (1) of this section will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default unless the provider is within the six month or 30 day grace period allowed under subsection (1) of this section.

(6) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(7) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(8) All disqualification periods run consecutively.

(9) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (4) of this section.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) Fingerprint cards are not required if the Department or CCL is reasonably satisfied that the covered individual has resided in Utah for the last five years or is a refugee who settled directly to Utah. A fingerprint card may be required, even if the individual has resided in Utah for the last five years or is a refugee who settled directly to Utah, if requested by the Department or CCL.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also

report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

KEY: child care
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Notice of Continuation September 8, 2010

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-901. Authority for Food Stamps and Applicable Rules.

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: http://www.fns.usda.gov/fsp/. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted otherwise.

R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system (EBT).

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(i) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(j) A client may waive his or her right to an administrative disqualification hearing.

(k) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(l) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(m) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(n) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPTP, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

(o) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(p) The Department allows the following exemptions from the Employment and Training (E and T) program for individuals who:

(i) are Refugee Cash Assistance (RCA) participants;

(ii) are on a temporary layoff from their place of employment;

(iii) are unemployed for less than 6 months;

(iv) live more than 35 miles from an employment center;

(v) lack child care, either because it is not available or the customer is not eligible for child care assistance;

(vi) are not appropriate for E and T as determined by a manager or designee;

(vii) are age 47 through the month of their 60th birthday;

(viii) are low functioning/have developmental disabilities/are socially dysfunctional and who have obvious functional limitations that are a substantial handicap to employment;

(ix) have current domestic violence issues;

(x) have limited language skills or individuals whose primary language is other than English;

(xi) lack public and/or private transportation;

(xii) are in the application or appeals process for SSI;

(xiii) have earned income, regardless of the amount earned;

(xiv) have no fixed address;

(xv) are pregnant regardless of trimester;

(xvi) are on probation or parole who are required to complete court ordered activities such as work release and drug court; or

(xvii) are participating in a program with a Department partner such as case management by Vocational Rehabilitation, or are participating in a Title V or Choose to Work program.

(q) Beginning July 1, 2012, individuals who meet the requirements of an exemption will no longer be allowed to receive services on a voluntary basis or receive a work reimbursement.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(b) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(c) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(d) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(e) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(f) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(g) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(h) The Department will hold disqualification hearings by telephone.

(i) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(j) The federal regulation that requires all interviews be scheduled for a specific date and time is waved for initial telephone interviews. This allows clients to call anytime Monday through Friday from 8 a.m. to 5 p.m. to complete the required initial interview. Households selected for the "Assessment of the Contributions of an Interview to the Supplemental Nutrition Assistance Program (SNAP) Eligibility and Benefits Determinations" study, also known as the No Interview Pilot, will be exempt from the interview requirement. Customer contact may be needed to complete the application and/or recertification process. This waiver will be in place September 1, 2012 - November 30, 2013.

(k) To meet the student work exemption. a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

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