R23. Administrative Services, Facilities Construction and Management.
R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
R23-23-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.

(2) In addition:

(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, the Director's duly authorized designee.

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

(d) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

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

R23-23-4. Applicability of Rule.

(1) Except as provided in Subsections R23-23-4(2) or R23-23-4(3) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board, and

(a) applies to a prime contractor if the prime contract is in the amount of $2,000,000 or greater at the original execution of the contract; and

(b) applies to a subcontractor if the subcontract is in the amount of $1,000,000 or greater at the original execution of the contract.

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R23-23-5. Contractors and Subcontractors to Comply with Section 63A-5-205.

(1) All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

(2) If a subcontractor of the contractor is subject to Section 63A-5-205(3) or Section R23-23-4, the contractor shall:

(a) Place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(b) certify to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. A Contractor (including Design Professional) shall demonstrate compliance with Subsection 63A-5-205(6)(a) or (b) at the time of execution of each initial contract described in Subsection 63A-5-205(3).

(a) The compliance is subject to an audit by the Department of Administrative Services, the Division or the Office of the Legislative Auditor General.

(b) A Contractor (including Design Professional) subject to Subsection 63A-5-205(3) shall demonstrate to the director that the Contractor has and will maintain an offer of qualified health insurance coverage for the Contractor's employees and employees' dependents.

(c) Such demonstration shall be a certification on the form provided by Division. The form shall also require compliance with Subsection R23-23-5(2) regarding subcontractors.

(d) The actuarially equivalent determination required for the qualified health insurance coverage is met by the Contractor if the Contractor provides the Division with a written statement of actuarial equivalency attached to the certification, which is not more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates. The Contractor is responsible for collecting the statements as required by law from any of the subcontractors at any tier that must do so.

(2) For purposes of this Rule R23-23-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 63A-5-205(1)(e) that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).

(3) The health insurance must be available upon the first day of the calendar month following sixty (60) days from the date of hire.

(4) Any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(5) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in

the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Subsections (3) through (10) of 63A-5-205 include:

(i) 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 with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of Section 63A-5-205 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R23-23-7(5)(c)(i) as provided in Subsection 63A-5-205(8)(b). An employee has a private right of action only against the employee's employer to enforce the provision of Subsection 63A-5-205(8).

R23-23-8. 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 State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts, contract requirements

July 22, 2016 63A-5-103(1)(e)

Notice of Continuation June 10, 2014 63A-5-205

R33. Administrative Services, Division of Purchasing and General Services.
R33-12. Terms and Conditions, Contracts, Change Orders and Costs.
R33-12-101. Required Contract Clauses.

Public entities shall comply with Section 63G-6a-1202 considering clauses for contracts. Executive branch procurement units shall also comply with the requirements of Section 63G-6a-110(6). All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-12-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall be required to use the Standard Terms and Conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the Chief Procurement Officer after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:

(a) a category of procurement items;

(b) a specific procurement item;

(c) general use in all procurements;

(d) the special needs of a conducting procurement unit; or

(e) the requirements of federal funding.

(2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:

(a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:

(i) the terms and conditions are unduly restrictive;

(ii) will unreasonably increase the cost of the procurement item; or

(iii) places the state at increased risk.

(b) the chief procurement officer may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

R33-12-301. Awarding Multiple Award Contracts.

(1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with a vendor on multiple award contract pursuant to the procedures established in R33-12-301.2, ordering from a multiple award contract.

(2) As authorized under Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts.

(3) A multiple award contract may be awarded under a single solicitation when two or more bidders or offerors for similar procurement items are needed for:

(a) Coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:

(i) delivery;

(ii) service;

(iii) product availability; or

(iv) Compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth in Section 63G-6a-603 and Section 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:

(a) Indicates that contracts may be awarded to more than one bidder or offeror;

(b) Specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and

(c) Describes specific methodology or a formula that will be used to determine the number of contract awards.

(5) Multiple award contracts in an invitation for bids shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 6 to the lowest responsive and responsible bidder(s) who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:

(a) lowest bids for all procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by the following methods:

(i) all bids within a specified percentage, not to exceed five percent, of the lowest responsive and responsible bid, unless otherwise approved in writing by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) all responsive and responsible bidders will be awarded a contract, provided the contract specifically directs that orders must be placed first with low bidder unless the lowest bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest bidder cannot provide the needed procurement item, and so on in order from the lowest responsive and responsible bidder to the highest responsive and responsible bidder; or

(iii) other methodology described in the solicitation to award contracts;

(b) lowest bid by Category provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per category;

(ii) only one bidder may be awarded a contract per category;

(c) lowest bid by line item provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per line item, task or service;

(ii) only one bidder may be awarded a contract per line item, task or service; or

(d) Other specific objective methodology described in the solicitation, such as R33-12-302 for primary and secondary contracts, approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 7 and may be awarded on a statewide, regional, combination statewide and regional basis, agency specific requirement, or other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the decision of whether to award a multiple contract and who should receive a multiple award contract.

R33-12-301a. Multiple Award Contracts for Unidentified Procurement Items.

(1) An unidentified procurement item is defined as a procurement item that at the time the solicitation is issued:

(a) Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list;

(b) Does not have a clearly defined project or procurement specific scope of work; and

(c) Does not have a clearly defined project or procurement specific budget.

(2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or Section R33-4-102.

(3) An RFP, request for statements of qualifications, or multi stage solicitation issued for a multiple award contract for unidentified procurement item(s) must specify the methodology that the procurement unit will use to determine which vendor under the multiple award contract will be selected.

(a) The methodology must include a procedure to document that the procurement unit is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.

(b) The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:

(i) a rotation system, organized alphabetically, numerically, or randomly;

(ii) assigning a potential vendor or contractor to a specified geographical area;

(iii) classifying each potential vendor or contractor based on the potential vendor's or contractor's field or area of expertise; or

(iv) obtaining quotes or bids from two or more vendors or contractors.

R33-12-301b. Ordering From A Multiple Award Contract.

(1)(a) When buying a procurement item from a multiple award contract solicited through an invitation for bids, a procurement unit shall:

(i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;

(ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in R33-12-301(5)(a)(ii);

(iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(iii);

(iv) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(b); or

(v) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(c);

(b) The requirement to obtain two or more quotes in section (1)(a)(i) is waived when there is only one bidder award for the particular procurement item or only one bidder is awarded per geographical area.

(2) When buying a procurement item from a multiple award contract solicited through an RFP, a procurement unit may place orders with any vendor or contractor under contract based on which procurement item best meets the needs of the procurement unit. Contracts awarded through the RFP process are awarded based on best value as determined by cost and non-price criteria specified in the RFP. As a result, all vendors, contractors and procurement items under contract issued through an RFP have been determined to provide best value to procurement units buying from these contracts.

(3) A procurement unit may not use a multiple award contract to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors that have been awarded a contract under a multiple award.

R33-12-302. Primary and Secondary Contracts.

(1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

(2) When the chief procurement officer or head of a procurement unit with independent procurement authority determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

(3) Purchases under primary and secondary contracts shall be made, initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability, and so on.

R33-12-303. Intent to Use.

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

R33-12-401. Contracts and Change Orders -- Contract Types.

A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

R33-12-402. Prepayments.

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

R33-12-403. Leases of Personal Property.

Leases of personal property are subject to the following:

(1) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(a) it is in the best interest of the procurement unit;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(3) Lease contracts shall be conducted with as much competition as practicable.

(4) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:

(a) investigate alternative means of procuring comparable procurement items; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R33-12-404. Multi-Year Contracts.

(1) Procurement units may issue multi-year contracts in accordance with Section 63G-6a-1204.

(2) The standard contract term for executive branch procurement units is five years, unless the chief procurement officer or head of a procurement unit with independent procurement authority determines that a shorter or longer term contract is in the best interest of the procurement unit after considering:

(a) the cost associated with conducting more than one procurement within a five-year period if a shorter term is required;
(b) the impact on competition if a longer term is required;
(c) standard practices for the industry; and
(d) the needs of the procurement unit.

R33-12-404.1. Contracts With Renewal Options.
(1) In order to ensure fair and open competition in the procurement process and to avoid costs associated with administering contracts with renewal options, executive branch procurement units shall document in writing why renewal options are in the best interest of the procurement unit taking into consideration:
(a) federal funding requirements;
(b) the cost associated with administering renewal options;
(c) how the cost of the procurement item will be established during any renewal periods; and
(d) how the principle of upholding fair and open competition will be maintained.

R33-12-405. Installment Payments.
(1) Procurement units may make installment payments in accordance with Section 63G-6a-1208.

R33-12-501. Change Orders.
(1) In addition to the requirements contained in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the chief procurement officer prior to the commencement of any work to be performed under a contract change order unless:
(a) The procurement unit has authority, as may be granted under Section 63G-6a-304(1) and Section R33-3-101, to authorize contract change orders up to the amount delegated; or
(b) The change order is requisite to:
(i) avert an emergency; or
(ii) is required as an emergency.
(c) For purposes of this subsection "emergency" is described in Subsection R33-8-401(3) and is subject to Section 63G-6a-803.
(2) Any contract change order authorized by a procurement unit under Subsection R33-12-501(1)(c)shall, as soon as practicable, be submitted to the chief procurement officer and included in the division's contract file.

R33-12-502. Contract Modifications for New Technology and Technological Upgrades.
A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:
(1) The solicitation contains a statement indicating that:
(a) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:
(i) systems;
(ii) apparatuses;
(iii) modules;
(iv) components; and
(v) other supplementary items;
(b) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and
(c) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.
(2) Any contract modification incorporating new technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.
(3) Prior to executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the Executive Director of the Department of Technology Services.
(4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

R33-12-601. Requirements for Cost or Pricing Data.
(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.
(2) Cost or pricing data exceptions:
(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;
(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the chief procurement officer or head of a procurement unit with independent procurement authority may request additional cost or pricing data; or
(c) the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R33-12-602. Defective Cost or Pricing Data.
(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.
(2) If a settlement cannot be negotiated, either party may seek relief through the courts.

R33-12-603. Price Analysis.
(1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:
(a) there are a limited number of vendors, bidders or offerors;
(b) awarding a sole source or other contract without engaging in a standard procurement process; or
(c) identifying price that are significantly lower or higher than other vendors, bidders, or offerors.
(2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, and so on.
(3) Examples of a price analysis include:
(a) prices submitted by other prospective bidders or offerors;
(b) price quotations;
(c) previous contract prices;
(d) comparisons to the existing contracts of other public entities; and,
(e) prices published in catalogs or price lists.

R33-12-604. Cost Analysis.
(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
(a) specific elements of costs;
(b) total cost of ownership and life-cycle cost;
(c) supplemental cost schedules;
(d) market basket cost of similar items;
(e) the necessity for certain costs;

(f) the reasonableness of allowances for contingencies;
(g) the basis used for allocation of indirect costs; and,
(h) the reasonableness of the total cost or price.

R33-12-605. Audit.

A procurement unit may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

R33-12-606. Retention of Books and Records.

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law.

All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

R33-12-607. Applicable Credits.

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

R33-12-608. Use of Federal Cost Principles.

(1) In dealing with contractors operating according to federal cost principles, the chief procurement officer or head of a procurement unit with independent procurement authority, may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in

(2) In contracts not awarded under a program which is funded by federal assistance funds, the chief procurement officer or head of a procurement unit with independent procurement authority may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The chief procurement officer or head of a procurement unit with independent procurement authority and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.

(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

R33-12-609. Authority to Deviate from Cost Principles.

If a procurement unit desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the chief procurement officer or head of a procurement unit with independent authority specifying the reasons for the deviation and the written determination shall be made part of the contract file.

R33-12-701. Inspections.

Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

(1) whether the definition of "responsible", as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are capable of being met; and

(2) if the contract is being performed in accordance with its terms.

R33-12-702. Access to Contractor's Manufacturing/Production Facilities.

(1) The procurement unit may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:

(a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-12-605; and

(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

R33-12-703. Inspection of Supplies and Services.

(1) Contracts may provide that the procurement unit or chief procurement officer or head of a procurement unit with independent procurement authority may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R33-12-704. Conduct of Inspections.

(1) Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the chief procurement officer or head of a procurement unit with independent procurement authority. The presence or absence of an inspector or an inspection, shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

KEY: terms and conditions, contracts, change orders, costs
February 23, 2016 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-15. Procurement of Design Professional Services.
R33-15-101. Application.

The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-4-105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-15-201. Architect-Engineer Evaluation Committee.

The chief procurement officer or head of a procurement unit with independent procurement authority shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707, at least one of which is well qualified in the profession of architecture or engineering.

R33-15-301. Request for Statement of Qualifications.

(1) A procurement unit shall issue a public notice for a request for statement of qualifications to rank architects or engineers.

(2) A procurement unit that issues a request for statement of qualifications shall:

(a) state in the request for statement of qualifications:

(i) the type of procurement item to which the request for statement of qualifications relates;

(ii) the scope of work to be performed;

(iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;

(iv) criteria used to evaluate statements of qualifications including:

(A) basic information about the person or firm;

(B) experience and work history;

(C) management and staff;

(D) qualifications and certification;

(E) licenses and certifications;

(F) applicable performance ratings;

(G) financial statements; and

(H) other pertinent information.

(b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.

(3) Architects and engineers shall not include cost in a response to a request for statement of qualifications

R33-15-302. Evaluation of Statement of Qualifications.

The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers.

R33-15-303. Negotiation and Award of Contract.

The chief procurement officer or head of a procurement unit with independent procurement authority shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

R33-15-304. Failure to Negotiate Contract With the Highest Ranked Firm.

(1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall advise the firm in writing of the termination of negotiations.

(2) Upon failure to negotiate a contract with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall proceed in accordance with Section 63G-6a-1505 of the Utah Procurement Code.

R33-15-305. Notice of Award.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority shall award a contract to the highest ranked firm with which the fee negotiation was successful.

(2) Notice of the award shall be made available to the public.

R33-15-401. Written Justification Statements.

Executive branch procurement units shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

KEY: architects, engineers, government purchasing
July 8, 2014 63G-6a

R33. Administrative Services, Division of Purchasing and General Services.
R33-16. Protests.
R33-16-101. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-16-101a. Grounds for a Protest.

(1) This Rule shall apply to all protests filed under Section 63G-6a-1602.

(2) In accordance with the requirements set forth in Section 63G-6a-1602(3)(a)(ii), a person filing a protest must include a concise statement of the grounds upon which the protest is made.

(a) A concise statement of the grounds for a protest should include the relevant facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(i) An alleged violation of Utah Procurement Code 63G-6a;

(ii) An alleged violation of Title R33 or other applicable rule;

(iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;

(iv) A provision of the solicitation alleged to be:

(A) ambiguous;

(B) confusing;

(C) contradictory;

(D) unduly restrictive;

(E) erroneous;

(F) anticompetitive; or

(G) unlawful;

(v) An alleged error made by the evaluation committee or conducting procurement unit;

(vi) An allegation of bias by the evaluation committee or an individual committee member; or

(vii) A scoring criteria allegedly not being correctly applied or calculated.

(b) "Relevant Facts" as referred to in Section 63G-6a-1602(3)(a)(ii), in addition to being relevant, must be specific enough to enable the protest officer to determine, if such facts are proven to be true, whether a legitimate basis for the protest exists.

(c) None of the following qualify as a concise statement of the grounds for a protest:

(i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated allegations that do not reference relevant or specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that:

(A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score;

(B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror's, or prospective contractor's service or product;

(C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation; or

(D) any item listed in Section 63G-6a-1602(3)(a)(ii) of this Rule has occurred that is not relevant or specific;

(iii) Filing a protest requesting:

(A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708,

(B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or

(C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.

(d) In accordance with Section 63G-6a-1603(1), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with this Rule.

R33-16-201. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R33-16-301. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-16-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests
August 21, 2015 63G-6a

R33. Administrative Services, Purchasing and General Services.
R33-18. Appeals to Court and Court Proceedings.
R33-18-101. Process.

(1) A person who receives an adverse decision, or a procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1801 through 63G-6a-1803. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-18-201. Appeals by Procurement Units -- Limitations.

A procurement unit may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

KEY: appeals, protests, Utah Court of Appeals
July 8, 2014 63G-6a

R131. Capitol Preservation Board (State), Administration.
R131-2. Capitol Hill Complex Facility Use.
R131-2-1. Purpose and Application.

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

R131-2-2. Authority.

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

R131-2-3. Definitions.

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and related areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

(6) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(7) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(8) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(9) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(10) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(11) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(12) "Free Speech Activity" is as defined in rule R131-11.

(13) "Cafe Operator" means the Capitol Hill cafe operator located on the first floor of the East Senate Building who is under contract with the Board to provide food/beverages in the State Room and may be allowed to cater in other areas on the Capitol Hill Complex.

(14) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(15) "Authorized Caterer" means a person or entity authorized to provide catering services on the Capitol Hill Complex, and is not the Cafe Operator.

(16) "Solicitation" is as defined in rule R131-10.

(17) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(18) "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

(19) "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 365 calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; i.e. individual, business entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The applicant may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex. Pursuant to Utah Code Section 53-8-105(9), the Highway Patrol shall enforce the state law and rules governing the use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited. There shall also be compliance with Utah Code Section 32B-4-415.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed. Except when necessary to avoid conflict with other traffic, or in compliance with law, the directions of a peace officer, or a traffic-control device, a person may not stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers in a parking space identified as reserved for specific users, without:

(i) Approval of the Executive Director; and

(ii) A properly displayed placard or other identifying marker approved by the Executive Director to indicate this approval.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) The following are all prohibited: Open flames; flammable fluids; candles with flames; burning incense; smoke; fog machines; disseminating dust, powder, glitter or confetti; and explosives; except that a gelled alcohol food warming fuel used for food preparation or warming, whether catered or not, is allowed provided that it is in:

(i) a one ounce capacity container (29.6 ml) on a noncombustible surface; or

(ii) a container on a noncombustible surface, not exceeding one quart (946.g ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be

waived. This subparagraph shall not apply to free speech activities or state sponsored activities.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling.

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8 a.m. to 4 p.m. The executive director may allow a different time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(e) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Cafe Operator and Authorized Caterer Requirements.

(a) In General. Catering services on the Capitol Hill Complex shall be exclusively provided by the Cafe Operator and Authorized Caterer for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable. Multiple Authorized Caterers may be approved by the Executive Director. The Cafe Operator shall be responsible for all activities in the kitchen, servery, dining and conference rooms associated with the dining room, known as the "State Room," and located on the first floor of the East Senate Building. The Cafe Operator shall have the exclusive right to provide food and beverages in the State Room, but may give permission for an Authorized Caterer to provide food and beverages in the State Room.

(b) Authorized Caterer Requirements. In order to qualify as an Authorized Caterer, an application must be approved by the Executive Director based on meeting the following requirements:

(i) Quality Control Policies. The Authorized Caterer must have quality control policies that are consistent with those set forth in the contract between the Board and the Cafe Operator. The Executive Director shall provide a form describing the minimum standards.

(ii) Application Form. A person or entity seeking to be an Authorized Caterer shall complete an application form approved by the Executive Director.

(iii) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The Authorized Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least $1,000,000 and general aggregate limits of at least $2,000,000. The selected Authorized Caterer shall also maintain, if applicable to the Authorized Caterer's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least $1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in this Rule, at the Authorized Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Authorized Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Authorized Caterer shall also maintain "all risk" property insurance at replacement cost applicable to the Authorized Caterer's property and/or its equipment.

(D) The Authorized Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Authorized Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Authorized Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(iv) Indemnification: The Authorized Caterer shall hold harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Authorized Caterer, or its agents, employees subcontractors or anyone for whom the Authorized Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(v) Record Keeping and Audit Rights: The Authorized Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Authorized Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vi) Equal Opportunity: The Authorized Caterer shall not unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(vii) Taxes: The Authorized Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Authorized Caterer, including taxes levied or incurred against Authorized Caterer's income, inventory, property, sales, or other taxes.

(viii) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(ix) Suspension/Debarment. The Authorized Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(x) Comply with Facility Use Rules. The Authorized Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Authorized Caterer has not complied with a rule enacted by the Board, the Authorized Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xi) Inspection. The Board or the Executive Director reserves the right to inspect the Authorized Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xii) Energy. The Authorized Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xiii) Food Handlers Permits. All of the Authorized Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xiv) The Authorized Caterer must have a locally grown food quality assurance program similar to that required of the Cafe Operator, which covers the food or products that are not provided by nationally recognized vendors.

(xv) Fees and costs associated with catering services, including the Cafe Operator or the Authorized Caterer, shall be the responsibility of the Applicant and cannot be waived.

(xvi) Security.

(A) An Authorized Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The Applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee cannot be waived.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state of other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulletin boards.

(12) Enforcement of Rules.

(a) A violation of a rule in any provision of R131-1 through R131-16 relating to the use of the Capitol Hill Complex is an infraction under Utah Code Section 63C-9-301(3)(b). If an act violating a rule subject to Utah Code Section 63C-9-301(3)(b) also amounts to an offense subject to a greater penalty under Title 32B, Alcoholic Beverage Control Act, Title 41, Motor Vehicles, Title 76, Utah Criminal Code, Utah Code Section 76-8-301 (Interference with Public Servant), Utah Code Section 76-9-102 (Disorderly Conduct), or other provision of state law, Utah Code Section 63C-9-301(3)(b) does not prohibit prosecution and sentencing for the more serious offense;

(b) In addition to any punishment allowed under Utah Code Section 63C-9-301(3)(b), pursuant to Utah Code Section 63C-9-301(3)(d), is subject to a civil penalty not to exceed $2,500 for each violation, plus the amount of any actual damages, expenses, and costs related to the violation of the rule that are incurred by the state; and

(c) The law enforcement or security officer may issue a warning citation or pursue other lawful:

(i) Civil or criminal enforcement;

(ii) removal from the Capitol Hill Complex;

(iii) make an arrest; and/or

(iv) cancel the subject event or activity.

(13) Waivers.

The Executive Director may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Any approved waiver must still require compliance with all other provisions of this Rule. The waiver request must be submitted in writing to the Executive Director and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the Executive Director to assure the appropriate protection of facilities, grounds and persons. An appeal of a denial or the conditions of such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.

(1) Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall be charged a rental of the space fee as specified on the Board's fee schedule.

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Authorized Caterer Fee. Any fee or costs of an Authorized Caterer are the responsibility of the Applicant. The State of Utah, the Capitol Preservation Board, State Officials, employees and anyone for whom the State may be liable, shall have no liable whatsoever for such fee or costs owed to the Authorized Caterer.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After-hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

R131-2-11. Fees and Charges During Legislative Session.

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

(i) Kletting Room located in the Senate Building;

(ii) Olmstead Room located in the Senate Building;

(iii) Spruce Room located in the Senate Building;

(iv) Beehive Room located in the Senate Building;

(v) Seagull Room located in the Senate Building;

(vi) Copper Room located in the Senate Building;

(vii) Rooms B110 and 1112 in the State Office Building;

(viii) Room 130, the Multipurpose/Public Lounge located in the Capitol;

(ix) Room 170 located in the Capitol; and

(x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) The use of the State Room in the East Senate Building is to be for public use except for certain hours established by the Executive Director when the public does not ordinarily use the State Room.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if, in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of $50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use
July 22, 2016 63C-9-101 et seq.
Notice of Continuation December 29, 2014

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

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

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

R137-1-2. Definitions.

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

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

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

"Administrator" means the person appointed under Subsection 67-19a-201(1).

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

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

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

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

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

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R137-1-3. Classification Jurisdiction.

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

R137-1-4. Complaints From Applicants.

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

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

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

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

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

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

R137-1-6. Filing Procedure.

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

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

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

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

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

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

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

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

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) deposit with State Mail and Distribution Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

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

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

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

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

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

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

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

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

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

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

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

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees and reporting employees alleging retaliatory action, as defined by Subsections 67-19a-101(7) and 67-19a-101(8), may use these grievance procedures.

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

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

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

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

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

All grievances shall be reviewed to determine:

(1) Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsections 67-19a-202(1)(a) and 67-19a-202(1)(6), or

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

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the CSRO from awarding fees or costs to an employee's attorney or representative. Pursuant to Subsection 67-19a-402.5(6)(a), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee in a retaliatory action grievance.

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

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

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

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

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

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

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

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

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

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

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

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

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Sections 67-19a-402 and 67-19a-402.5, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(i) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(ii) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-402.5, 67-19a-403 and 67-19a-404.

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

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

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

(5) Judicial Review.

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

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

(c) A decision reached by the CSRO in reviewing a retaliatory action grievance from a reporting employee, as defined by Subsections 67-19a-101(7) and 67-19a-101(8),may be appealed to the Utah Court of Appeals.

(6) Summary Judgment. The administrator or the (Presiding Officer, Utah Code Ann. Section 63G-4-103(1)(h)(i)) hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

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

(c) the grievant lacks standing;

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

(e) the grievant has not been directly harmed;

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

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

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

R137-1-18. Procedural Matters.

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

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

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

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

(b) An administrative review of the file, pursuant to Subsections 67-19a-403(2) and 67-19a-402.5(2)(b)(2), is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.

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

(4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person. The hearing officer may also expel any persons whose presence is antagonistic, oppressive, intimidating or appears to have a chilling effect on the witness under examination.

(5) Presentation of Case. Each party is given the opportunity to make an opening statement and to present evidence. After the evidence is closed, each party may offer a closing argument. The moving party may offer one rebuttal.

Continuous rebuttal is not permissible.

(6) Objections.

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

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

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

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

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

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

(10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsections 67-19a-406(2) and 67-21-3.5.

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

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

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

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

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

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

(c) No other form of discovery is permitted.

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

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

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

(13) Page Limitation.

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

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

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

R137-1-19. Witnesses.

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

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

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

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

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

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

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

(3) Exclusion/Sequestering of Witnesses.

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

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties or in the presiding hearing officer's discretion.

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

(4) Management Representative. Prior to every hearing the agency may designate one person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify, unless the hearing officer determines it is reasonable to expel the management representative for any or part of the hearing.

R137-1-20. Public Hearings.

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

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

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

(b) An evidentiary/step 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a

state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

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

(3) Media Presence. All hearings at the jurisdictional and evidentiary/step 4 level are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step 4 proceeding.

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

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

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

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

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

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

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

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

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

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

(h) reopen the evidentiary record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to

Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

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

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within twenty days after the evidentiary/step 4 decision is issued as provided at Section 63G-4-302.

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

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

R137-1-22. Declaratory Orders.

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

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

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

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

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

(3) Petition Form. The petition shall:

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

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

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

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

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

(f) be signed by the petitioner.

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

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

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

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

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

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

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

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

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

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

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

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

KEY: grievance procedures, reconsiderations

July 22, 2013	**34A-5-106**
Notice of Continuation July 11, 2016	**67-19-16**
	67-19-30
	67-19-31
	67-19-32
	67-19a et seq.
	63G-4 et seq.

R151. Commerce, Administration.
R151-2. Government Records Access and Management Act Rule.
R151-2-1. Purpose and Authority.

This rule is made pursuant to Section 63G-2-204, which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63A-12-104 (2), which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63G-2-603, concerning requests to amend a record.

R151-2-2. Duties of Divisions within the Department.

Each division director shall comply with Section 63A-12-103 and shall appoint a records officer to perform, or to assist in performing, the following functions:

(1) the duties set forth in Section 63A-12-103; and

(2) responding to requests for access to division records.

R151-2-3. Requests for Access.

(1) Waiver of Written Requests: Notwithstanding Subsection 63G-2-204 (1) requiring written requests for records, a division may at its discretion waive the requirement for a written request if the records requested are public, the records are readily accessible, and the request is filled promptly by allowing access or copying at the time the request is made.

(2) To whom directed: All requests for access to records shall be directed to the records officer of the particular division which the requester believes generated or possesses the records.

(3) Fees: A fee shall be charged for copies of records provided. That fee shall be established pursuant to Title 63J, Chapter 1 and Subsection 63G-2-203 (1). Fees must be paid at the time of the request or before the records are provided to the requester.

R151-2-4. Forms.

(1) The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", is intended to assist persons who request records to comply with the requirements of Subsection 63G-2-204 (1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization, if any, a description of the records requested, and information regarding the requester's status, for records which are not public.

(b) Form 2-206(5), "Disclosure and Agreement", is to be used when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63G-2-206 (5). This form discloses to the governmental entity certain information regarding restrictions on access and obtains the written agreement of the governmental entity to abide with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

R151-2-5. Designation of Authorized Officers.

(1) The determinations or weighing of interests permitted or required under the following sections by a "governmental entity" or the "head of a governmental entity" shall be made by the division director which has custody or control of the records, or his designee:

(a) Subsection 63G-2-201 (5) (b), which governs disclosure of certain private or protected records;

(b) Section 63G-2-309, which governs business confidentiality claims;

(c) Subsection 63G-2-202 (8), which governs disclosure for research purposes;

(d) Subsection 63G-2-201 (10) (a), which governs intellectual property rights.

(2) The "chief administrative officer of the governmental entity" for purposes of appeals under Sections 63G-2-401 and 63G-2-603 shall be the Executive Director of the Department of Commerce or the Executive Director's designee.

R151-2-6. Designation of Requests to Amend Record.

Requests to amend a record under Section 63G-2-603 are hereby designated as informal proceedings.

KEY: government documents, freedom of information, public records

July 8, 2008	**63G-2-204**
Notice of Continuation July 18, 2016	**63G-2-201(5)(b)**
	63G-2-201(10)(a)
	63G-2-202(8)
	63G-2-308
	63G-2-401
	63G-2-603

R152. Commerce, Consumer Protection.
R152-1a. Internet Content Provider Ratings Methods.
R152-1a-1. Authority and Purpose.

In accordance with Utah Code Sections 76-10-1231(7)(c) and 76-10-1233(2), these rules (R152-1a) establish acceptable rating methods by which a content provider may restrict access to material harmful to minors.

R152-1a-2. Definitions.

As used in these rules (R152-1a):

(1) "Content provider" is as defined in Utah Code Section 76-10-1230.

(2) "Harmful to minors" is as defined in Utah Code Section 76-10-1201.

(3) "HTML" means Hypertext Markup Language, the authoring language used to create documents on the Internet, which defines the structure and layout of an Internet document.

(4) "URL" means an Internet address, usually consisting of at least an access protocol and a domain name.

(5) "Utah content provider" means a content provider described in Utah Code Section 76-10-1233(1).

R152-1a-3. Compliance with Utah Code Section 76-10-1233(1).

A Utah content provider may comply with Utah Code Section 76-10-1233(1) by rating material harmful to minors with a rating label:

(1) listed in R152-1a-4; and

(2) placed in a location listed in R152-1a-5.

R152-1a-4. Acceptable Rating Labels.

A Utah content provider may rate material harmful to minors with one of the following labels:

(1) "XXX" in all capital letters;

(2) "xxx" in all lower case letters; or

(3) "-NFM-" which consists of the letters NFM in all capital letters:

(a) immediately preceded by a single hyphen, en dash, or em dash; and

(b) immediately followed by a single hyphen, en dash, or em dash.

R152-1a-5. Acceptable Rating Locations.

A Utah content provider may rate material harmful to minors by placing a label listed in R152-1a-4 in one of the following locations:

(1) if the material harmful to minors is contained within an Internet website:

(a) within the URL of the website; or

(b) within the first 300 characters of the HTML for the website;

(2) if the material harmful to minors is contained within an email message:

(a) within the first 300 characters of the email message;

(b) in the subject line of the email message;

(c) in the return address of the email message; or

(d) in any of the descriptive headers of the email message; or

(3) if the material harmful to minors is contained within a chat-room message or any other type of instant message:

(a) within the first 300 characters of the chat-room message or instant message; or

(b) within the personal identification of the sender of the chat-room message or instant message.

KEY: Internet ratings, consumer protection
September 18, 2006 76-10-1231(7)(c)
Notice of Continuation July 15, 2016 76-10-1233(2)

R152. Commerce, Consumer Protection.
R152-15. Business Opportunity Disclosure Act Rules.
R152-15-1. Authority and Purpose.

Pursuant to Section 13-15-3, these rules are intended to assist in the administration of the Business Opportunity Disclosure Act, Chapter 15, Title 13.

R152-15-2. Filing Requirements. Filing Fees.

(1) Information filed with the Division. In addition to the information required to be filed by Section 13-15-4 or 13-15-4.5 Utah Code Annotated (1953, as amended), sellers shall file with the Division, upon request, the following:

(a) the name and address of the registered agent of seller;

(b) any promotional materials used or to be used by either the seller or the purchaser, whether in writing or in any other form; and

(c) the appropriate filing fee as set in accordance with Section 63J-1-303 Utah Code Annotated (1953, as amended), which presently is set as follows:

(i) Section 13-5-4 filing: $200.00 per year; and

(ii) Section 13-15-4.5 filing: $100.00 per year.

(2) Amendment of disclosures. The disclosure document must be current as of the seller's most recent fiscal year, or no later than 90 days after the close of its most recent fiscal year. A seller must amend any information it files or filed with the Division in the event of any material change in the information. Such amendment shall be made by filing with the Division, within a reasonable time after such material change, the new or correct information.

(a) "Material change" means any change in information where there is a reasonable likelihood the decision of a prospective purchaser to purchase or not purchase the assisted marketing plan would be influenced by the change.

(b) Without limitation, example of material changes include:

(i) An increase or decrease in the initial or continuing fees charged by the seller;

(ii) The termination, cancellation, failure to renew or reacquisition of a significant number of purchasers of an assisted marketing plan since the most recent date of filing;

(iii) Any significant change in seller's management;

(iv) Any significant change in the seller's or purchaser's obligations;

(v) Significant decrease in seller's income or net worth or;

(vi) Significant change in claims about past sales or projected sales, income, gross or net profits, cash flows or costs involved in the assisted marketing plan.

R152-15-3. Compensated Employees and Independent Contractors.

(1) As used in Utah Code Section 13-15-2(1)(a)(iv), "sales program" or "marketing program" shall not include support, advice, or training that is:

(a) provided by a business to its compensated employee or independent contractor;

(b) unrelated to sales or marketing; and

(c) regarding work performed for the business providing the support, advice, or training.

KEY: franchises, marketing, consumer protection
July 8, 2016 13-15-3
Notice of Continuation March 22, 2012 13-2-5

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

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

R156-1-102. Definitions.

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

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

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant:

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

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

(5) "Conditional licensure" means an interim non-adverse licensure action, in which a license is issued to an applicant for initial, renewal, or reinstatement of licensure on a conditional basis in accordance with Section R156-1-308f, while an investigation or audit is pending.

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

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

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

(8) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the

licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

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

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

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

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

(vii) remorse.

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

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

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

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

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

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

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

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

(20) "Probation" means disciplinary action placing terms and conditions upon a license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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

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

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

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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.

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

(a) Commission.

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

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

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

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

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

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

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

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

(vi) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order of the Construction Services Commission or its designee, the Director or the Director's designee shall return the order to the Commission or its designee with the reasons set forth in writing for refusing to concur. The Commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return. The Director or the Director's designee shall consider the Commission's resubmission of an adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Commission or its designee and the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

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

(viii) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's Designee, and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or the Director's designee within the Department.

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

(b) Director. The Director or the Director's designee is designated as the presiding officer for the concurrence role, except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

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

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

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

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

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission

in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

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

R156-1-110. Issuance of Investigative Subpoenas.

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

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

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

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

(3)(a) Service may be made:

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

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

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

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

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) This section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to a statutory provision; and

(b)(i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; or

(ii) has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.

(2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:

(a) aggravating circumstances, as defined in Subsection R156-1-102(2);

(b) mitigating circumstances, as defined in Subsection R156-1-102(17);

(c) the degree of risk to the public health, safety or welfare;

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

(i) the current administrative status of the applicant or licensee;

(j) results of previously submitted applications, for any regulated profession or occupation;

(k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(m) psychological evaluations; or

(n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

(a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or

(b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) architect;
(b) audiologist;
(c) certified public accountant emeritus;
(d) certified court reporter;
(e) certified social worker;
(f) chiropractic physician;
(g) clinical mental health counselor;
(h) clinical social worker;
(i) contractor;
(j) deception detection examiner;
(k) deception detection intern;
(l) dental hygienist;
(m) dentist;
(n) dispensing medical practitioner - advanced practice registered nurse;
(o) dispensing medical practitioner - physician and surgeon;
(p) dispensing medical practitioner - physician assistant;
(q) dispensing medical practitioner - osteopathic physician and surgeon;
(r) dispensing medical practitioner - optometrist;
(s) dispensing medical practitioner - clinic pharmacy;
(t) genetic counselor;
(u) health facility administrator;
(v) hearing instrument specialist;
(w) landscape architect;
(x) licensed advanced substance use disorder counselor;
(y) marriage and family therapist;
(z) naturopath/naturopathic physician;
(aa) optometrist;
(bb) osteopathic physician and surgeon;
(cc) pharmacist;
(dd) pharmacy technician;
(ee) physician assistant;
(ff) physician and surgeon;
(gg) podiatric physician;
(hh) private probation provider;
(ii) professional engineer;
(jj) professional land surveyor;
(kk) professional structural engineer;
(ll) psychologist;
(mm) radiology practical technician;
(nn) radiologic technologist;
(oo) security personnel;
(pp) speech-language pathologist;
(qq) substance use disorder counselor; and
(rr) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division.

Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

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

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

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

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

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

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	September 30	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	September 30	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Construction Trades Instructor	November 30	odd years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator	November 30	even years
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber	January 31	even years
Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

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

specific requirements of the license:

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

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

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

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

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

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

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

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

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

(j) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

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

(l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

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

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

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

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

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

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

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

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

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

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

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

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee

continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Reinstatement of restricted, suspended, or probationary

licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

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

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

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

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

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

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

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

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

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

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

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

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

(d) pay any fines or citations owed to the Division prior to the surrender of license.

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

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

R156-1-310. Cheating on Examinations.

(1) Policy.

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

(2) Cheating Defined.

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

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

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

(b) If cheating is detected prior to commencement of the

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

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

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

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

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

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

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

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

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

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

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

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

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

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

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

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

R156-1-404d. Diversion - Procedures.

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

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

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

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

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

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

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

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

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

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

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

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

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

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

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a).

R156-1-502. Administrative Penalties.

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

TABLE

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

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

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

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

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

R156-1-503. Reporting Disciplinary Action.

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

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

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

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

July 11, 2016 **58-1-106(1)(a)**
Notice of Continuation January 5, 2012 **58-1-308**
58-1-501(2)

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

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

R156-17b-102. Definitions.

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

(1) "Accredited by ASHP" means a program that:

(a) was accredited by the ASHP on the day the applicant for licensure completed the program; or

(b) was in ASHP candidate status on the day the applicant for licensure completed the program.

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

(3) "Analytical laboratory":

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

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

(4) "ASHP" means the American Society of Health System Pharmacists.

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

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

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

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

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

(10) "Co-licensed partner" means a person that has the right to engage in the manufacturing or marketing of a co-licensed product.

(11) "Co-licensed product" means a device or prescription drug for which two or more persons have the right to engage in the manufacturing, marketing, or both consistent with FDA's implementation of the Prescription Drug Marketing Act as applicable.

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

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

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

(15) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

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

(17) "DMP" means a dispensing medical practitioner licensed under Section 58-17b, Part 8.

(18) "DMP designee" means an individual, acting under the direction of a DMP, who:

(a)(i) holds an active health care professional license under one of the following chapters:

(A) Chapter 67, Utah Medical Practice Act;

(B) Chapter 68, Utah Osteopathic Medical Practice Act;

(C) Chapter 70a, Physician Assistant Act;

(D) Chapter 31b, Nurse Practice Act;

(E) Chapter 16a, Utah Optometry Practice Act;

(F) Chapter 44a, Nurse Midwife Practice Act; or

(G) Chapter 17b, Pharmacy Practice Act; or

(ii) is a medical assistant as defined in Subsection 58-67-102 (9);

(b) meets requirements established in Subsection 58-17b-803 (4)(c); and

(c) can document successful completion of a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

(19) "DMPIC" means a dispensing medical practitioner licensed under Section 58-17b, Part 8 who is designated by a dispensing medical practitioner clinic pharmacy to be responsible for activities of the pharmacy.

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

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

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

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

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

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

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

(a) can withstand repeated use;

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

purpose;

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

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

(e) may include devices and medical supplies.

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

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

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

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

(28) "FDA-approved" means the federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. Section 301 et seq. and regulations promulgated thereunder permit the subject drug or device to be lawfully manufactured, marketed, distributed, and sold.

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

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

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

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

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

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

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

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

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

(c) "Rx only".

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

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

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

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

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

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

(39) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (19), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

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

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

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

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

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

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

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

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

(42) "Patient's agent" means a:

(a) relative, friend or other authorized designee of the patient involved in the patient's care; or

(b) if requested by the patient or the individual under Subsection (40)(a), one of the following facilities:

(i) an office of a licensed prescribing practitioner in Utah;

(ii) a long-term care facility where the patient resides; or

(iii) a hospital, office, clinic or other medical facility that provides health care services.

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

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

(45) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment where the prepackaging occurred.

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

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

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

(49) "Refill" means to fill again.

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

(51) "Research facility" means a facility where research takes place that has policies and procedures describing such research.

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

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

(54) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

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

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

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

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

(59) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 39-NF 34), 2016 edition, which is official from May 1, 2016 through Supplement 2, dated December 1, 2015, which is hereby adopted and incorporated by reference.

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

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

(a) intracompany sales or transfers;

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

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

(d) the distribution of drug samples;

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

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

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

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

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

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

R156-17b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 17b.

R156-17b-104. Organization - Relationship to Rule R156-1.

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

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

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

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

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

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

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

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge or Dispensing Medical Practitioner-In-Charge Requirements.

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

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

(2) A Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC or DMPIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door pharmacies;
(b) hospital clinic pharmacies;
(c) methadone clinic pharmacies;
(d) nuclear pharmacies;
(e) branch pharmacies;
(f) hospice facility pharmacies;
(g) veterinarian pharmaceutical facility pharmacies;
(h) pharmaceutical administration facility pharmacies;
(i) sterile product preparation facility pharmacies; and
(j) dispensing medical practitioner clinic pharmacies.

(3) A Class C pharmacy includes a pharmacy that is involved in:

(a) manufacturing;

(b) producing;

(c) wholesaling;

(d) distributing; or

(e) reverse distributing.

(4) A Class D pharmacy requires a PIC licensed in the state where the pharmacy is located and includes an out-of-state mail order pharmacy. Facilities with multiple locations shall have licenses for each facility and each component part of a facility.

(5) A Class E pharmacy does not require a PIC and includes:

(a) analytical laboratory pharmacies;

(b) animal control pharmacies;

(c) durable medical equipment provider pharmacies;

(d) human clinical investigational drug research facility pharmacies;

(e) medical gas provider pharmacies; and

(f) animal narcotic detection training facility pharmacies.

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

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

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

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

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

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

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

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

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

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

(a) accredited by ASHP; or

(b) conducted by:

(i) the National Pharmacy Technician Association;

(ii) Pharmacy Technicians University; or

(iii) a branch of the Armed Forces of the United States, and

(c) meets the following standards:

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

(ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technician trainees that address:

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

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

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examination as listed in Subsection R156-17b-303c(4) within two years after obtaining a pharmacy technician trainee license, unless otherwise approved by the Division in collaboration with the Board for good cause showing exceptional circumstances.

(a) Unless otherwise approved under Subsection (4), an individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018.

(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.

(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.

(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:

(i) the program no longer satisfies the pharmacy technician license education requirement in Utah; and

(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in Utah.

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

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

(b) has passed and maintained current PTCB or ExCPT certification.

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

(1) In accordance with Subsection 58-17b-303(1)(g), the standards are established as one of the following for the pharmacy internship required for licensure as a pharmacist:

(a) For graduates of all U.S. pharmacy schools:

(i) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2011, which is hereby incorporated by reference.

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

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

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

(v) Required experiences shall:

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

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

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

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

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

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

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

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

(b) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

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

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

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

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

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

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

(4) In accordance with Subsection 58-17b-305(1)(g), an applicant applying for licensure as a pharmacy technician shall pass the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

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

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

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-304. Temporary Licensure.

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

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

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

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

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

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

(a) six months from the date of issuance;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the PIC;

(b) the PIC's immediate supervisor;

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

(d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined

necessary by the Division in order to protect public health, safety and welfare; and

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

R156-17b-308. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17b is established by rule in Section R156-1-308a.

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

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

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

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

R156-17b-309. Continuing Education.

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

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

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

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

(a) for pharmacists:

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

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

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

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

(b) for pharmacy technicians:

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

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

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

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

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

(a) Pharmacists:

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

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

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

(b) Pharmacy Technicians:

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

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

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

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

R156-17b-401. Disciplinary Proceedings.

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

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

R156-17b-402. Administrative Penalties.

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

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

initial offense: $500 - $2,000

subsequent offense(s): $5,000

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

initial offense: $100 - $1,000

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

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

initial offense: $500 - $2,000

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

(4) conducting or transacting business under a name that

contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):

initial offense: $500 - $2,000

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

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

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

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

initial offense: $100 - $500

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

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

initial offense: $500 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $500 - $1,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

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

initial offense: $100 - $500

subsequent offense(s): $1,000 - $2,5000

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

initial offense: $500 - $2,000

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

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

initial offense:$2,500 - $5,000

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

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

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

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

initial offense: $500 - $2,000

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

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

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

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

initial offense: $500 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $100 - $500

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

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

initial offense: $500 - $2,000

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $500

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

(26) preparing a prescription drug in a dosage form that is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(13):

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

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

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

initial offense: $100 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $100 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $500 - $2,000

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $500

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

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

initial offense: $500 - $2,000

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $500

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

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

initial offense: $100 - $1,000

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

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

initial offense: $100 - $500

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

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

initial offense: $500 - $2,000

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

(70) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):

initial offense: $500 - $2,000

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

(71) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501 (2):

initial offense: $500 - $2,000

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

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

initial offense: $500 - $2,000

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

(73) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: $500 - $2,000

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

(74) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: $500 - $2,000

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

(75) failing, as a prescribing practitioner, to follow the

"Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: $500 - $2,000

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

(76) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: $1,000 - $5,000

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

(77) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance that is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: $500 - $2,000

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

(78) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: $500 - $2,000

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

(79) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: $500 - $2,000

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

(80) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action that revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: $500 - $2,000

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

(81) failing to maintain controls over controlled substances that would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: $500 - $2,000

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

(82) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: $500 - $2,000

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

(83) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):

initial offense: $500 - $2,000

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

(84) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):

initial offense: $500 - $2,000

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

(85) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):

initial offense: $500 - $2,000

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

(86) any other conduct that constitutes unprofessional or unlawful conduct:

initial offense: $100 - $500

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

(87) if licensed as a DMP or DMP clinic pharmacy, delegating the dispensing of a drug to a DMP designee who has not completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622, in violation of Subsection R156-17b-502 (25):

initial offense: $500 - $2,000

subsequent offense: $2,500 - $10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797 if such chapters are applicable to activities performed in the pharmacy;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(11) failing to identify licensure classification when communicating by any means;

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

(14) failing to offer to counsel any person receiving a prescription medication;

(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(16) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603;

(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;

(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(19) dispensing medication that has been discontinued by the FDA;

(20) failing to keep or report accurate records of training hours;

(21) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC;

(22) requiring a pharmacy, pharmacist, or DMP to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist or DMP to other pharmacy personnel in circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and

(24) failing to ensure, as a DMP or DMP clinic pharmacy, that a DMP designee has completed a formal or on-the-job dispensing training program that meets standards established in

Section R156-17b-622.

R156-17b-601. Operating Standards - Pharmacy Technician and Pharmacy Technician Trainee.

In accordance with Subsection 58-17b-102(56), practice as a licensed pharmacy technician is defined as follows:

(1) A pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(56);

(k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology to be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes that identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) A pharmacy technician trainee may perform any task in Subsection (1) with the exception of performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy as described in Subsection (1)(l).

(3) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(56)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(56)(b)(iv), does not include authorization of a refill of a legend drug.

(4) Pharmacy technicians shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(3)(s).

(5) No more than one pharmacy technician trainee per shift shall practice in a pharmacy. A pharmacy technician trainee shall practice only under the direct supervision of a pharmacist.

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-In-Charge or Dispensing-Medical-Practitioner-In-Charge.

(1) The PIC or DMPIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC or DMPIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a unique email address shall be established by the PIC, DMPIC, or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC, DMPIC, or responsible party shall notify the Division of the pharmacy's email address in the initial application for licensure.

(3) The duties of the PIC or DMPIC shall include:

(a) assuring that a pharmacist, pharmacy intern, DMP, or DMP designee dispenses drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern, or DMP communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist, pharmacy intern, or DMP;

(d) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(e) education and training of pharmacy personnel;

(f) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(g) disposal and distribution of drugs from the pharmacy;

(h) bulk compounding of drugs;

(i) storage of all materials, including drugs, chemicals and biologicals;

(j) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and

accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(k) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(l) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(m) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(n) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(o) if permitted to use an automated pharmacy system for dispensing purposes:

(i) ensuring that the system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards; and

(ii) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(p) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(q) assuring that all pharmacy personnel have the appropriate licensure;

(r) assuring that no pharmacy operates with a ratio of pharmacist or DMP to other pharmacy personnel circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(s) assuring that the PIC or DMPIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC or DMPIC within 30 days of the change; and

(t) assuring, with regard to the unique email address used for self-audits and pharmacy alerts, that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC or DMPIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC or DMPIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC or DMPIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(4) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC or DMPIC cannot provide notification 14 days prior to the closing, the PIC or DMPIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC or DMPIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

(9) Notwithstanding the requirements of this section, a DMP clinic pharmacy that closes but employs licensed practitioners who desire to continue providing services other than dispensing may continue to use prescription drugs in their practice as authorized under their respective licensing act.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC or DMPIC shall be responsible for taking all required inventories, but may delegate the performance of the

inventory to another person or persons;

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

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

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

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

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, DMPIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances that shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than one year in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to:

(i) no more than two pharmacy interns during a working shift except as provided in Subsection (ii);

(ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:

(A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and

(B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(69)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into

a patient prescription profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(69)(b) all supportive personnel shall be under the supervision of a licensed pharmacist or DMP. The licensed pharmacist or DMP shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the PIC, DMPIC, or other responsible employee:

(1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;

(2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;

(3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

(4)(i) provide for an electronic, telephonic, or written communication mechanism for a pharmacy to offer counseling to the patient as defined in Section 58-17b-613; and

(ii) provide documentation of such counseling; and

(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist or DMP at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

(v) charge for the prescription drug as dispensed to the patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, or DMP designee.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.

(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.

(3) Based upon the professional judgment of the pharmacist, pharmacy intern, or DMP, patient counseling may include the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Only a pharmacist, pharmacy intern, or DMP may orally provide counseling to a patient or patient's agent and answer questions concerning prescription drugs.

(6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (3) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (6)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

(7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care

professionals are authorized to administer the patient's drugs.

R156-17b-610.5. Dispensing in Emergency Department - Patient's Immediate Need.

In accordance with Section 58-17b-610.5, the guidelines for medical practitioners to dispense drugs to a patient in a hospital emergency department are established in this section.

(1) To meet a patient's immediate needs, the prescribing practitioner may provide up to a three-day emergency supply, which is properly labeled according to Subsection R156-17b-610.5(3).

(2) Notwithstanding Subsection R156-17b-610.5(1), the following may be provided:

(a) a seven day supply of sexually-transmitted infections (STI) prophylaxis;

(b) a Naloxone kit.

(3) Labeling of an emergency supply shall at a minimum include:

(a) prescribing practitioner's name, facility name and telephone number;

(b) patient's name;

(c) name of medication and strength;

(d) date given;

(e) instructions for use; and

(f) beyond use date.

(4) Records of controlled substances dispensed by the prescribing practitioner shall be provided to the appropriate pharmacy so that the applicable prescription data can be reported to the Utah Controlled Substance Database.

R156-17b-611. Operating Standards - Drug Therapy Management.

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

(a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;

(b) collecting and reviewing patient histories;

(c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and

(e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage or duration of drug treatment;

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, or DMP.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist, pharmacy intern, or DMP at the pharmacy holding the prescription to a pharmacist, pharmacy intern or DMP at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist, pharmacy intern, or DMP and receiving pharmacist, pharmacy intern, or DMP shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists, pharmacy interns, or DMP or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist, pharmacy intern, or DMP transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist, pharmacy intern, or DMP receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist, pharmacy intern, or DMP to whom such prescription is transferred; and

(E) the name of the pharmacist, pharmacy intern, or DMP transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders that have been previously transferred; and

(f) a pharmacist, pharmacy intern, or DMP may not refuse to transfer original prescription information to another pharmacist, pharmacy intern, or DMP who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the

prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist or DMP may exercise professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred that prohibits the pharmacist or DMP from being able to contact the practitioner; or

(ii) the pharmacist or DMP is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist or DMP informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist or DMP informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist or DMP maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist or DMP affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist or DMP may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy that contains the essential information;

(b) after a reasonable effort, the pharmacist or DMP is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist or DMP, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist or DMP complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(29) through (30), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist, pharmacy intern, or DMP only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist or DMP shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist or DMP is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner that has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist or DMP shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns, pharmacy technicians, or pharmacy technician trainees, DMPs, and DMP designees electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) if transferring a drug from a manufacturer's or distributor's original container to another container, the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) if dispensing controlled substances, be equipped with a security system to:

(i) permit detection of entry at all times when the facility is closed; and

(ii) provide notice of unauthorized entry to an individual; and

(g) be equipped with a lock on any entrances to the facility where drugs are stored.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. If a refrigerator or freezer is necessary to properly store drugs at the pharmacy, the pharmacy shall keep a daily written or electronic log of the temperature of the refrigerator or freezer on days of operation. The pharmacy shall retain each log entry for at least three years.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) Facilities shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations.

(b) Facilities may compound in anticipation of receiving prescriptions in limited amounts.

(c) Bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness.

(d) All facilities that dispense prescriptions must comply with the record keeping requirements of their State Boards of Pharmacy. When a facility compounds a preparation according to the manufacturer's labeling instructions, then further documentation is not required. All other compounded preparations require further documentation as described in this section.

(e) A master formulation record shall be approved by a pharmacist or DMP for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master formulation record shall be used as the compounding record from which each batch is prepared and on which all documentation for that batch occurs. The master formulation record may be stored electronically and shall contain at a minimum:

(i) official or assigned name;

(ii) strength;

(iii) dosage form of the preparation;

(iv) calculations needed to determine and verify quantities of components and doses of active pharmaceutical ingredients;

(v) description of all ingredients and their quantities;

(vi) compatibility and stability information, including references when available;

(vii) equipment needed to prepare the preparation;

(viii) mixing instructions, which shall include:

(A) order of mixing;

(B) mixing temperatures or other environmental controls;

(C) duration of mixing; and

(D) other factors pertinent to the replication of the preparation as compounded;

(ix) sample labeling information, which shall contain, in addition to legally required information:

(A) generic name and quantity or concentration of each active ingredient;

(B) assigned beyond use date;

(C) storage conditions; and

(D) prescription or control number, whichever is applicable;

(x) container used in dispensing;

(xi) packaging and storage requirements;

(xii) description of final preparation; and

(xiii) quality control procedures and expected results.

(f) A compounding record for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) official or assigned name;

(ii) strength and dosage of the preparation;

(iii) Master Formulation Record reference for the preparation;

(iv) names and quantities of all components;

(v) sources, lot numbers, and expiration dates of components;

(vi) total quantity compounded;

(vii) name of the person who prepared the preparation;

(viii) name of the compounder who approved the preparation;

(ix) name of the person who performed the quality control procedures;

(x) date of preparation;

(xi) assigned control, if for anticipation of use or prescription number, if patient specific, whichever is applicable;

(xii) duplicate label as described in the Master Formulation Record means the sample labeling information that

is dispensed on the final product given to the patient and shall at minimum contain:

(A) active ingredients;

(B) beyond-use-date;

(C) storage conditions; and

(D) lot number;

(xiv) proof of the duplicate labeling information, which proof shall:

(A) be kept at the pharmacy;

(B) be immediately retrievable;

(C) include an audit trail for any altered form; and

(D) be reproduced in:

(I) the original format that was dispensed;

(II) an electronic format; or

(III) a scanned electronic version;

(xvii) description of final preparation;

(xviii) results of quality control procedures (e.g. weight range of filled capsules, pH of aqueous liquids); and

(xix) documentation of any quality control issues and any adverse reactions or preparation problems reported by the patient or caregiver.

(g) The label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all active solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) beyond use date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate.

(h) All prescription labels for compounded sterile and non-sterile medications when dispensed to the ultimate user or agent shall bear at a minimum in addition to what is required in Section 58-17b-602 the following:

(i) generic name and quantity or concentration of each active ingredient. In the instance of a sterile preparation for parenteral use, labeling shall include the name and base solution for infusion preparation;

(ii) assigned compounding record or lot number; and

(iii) "this is a compounded preparation" or similar language.

(i) The beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist or DMP shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing beyond use dates shall be documented; and

(j) There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products (orange book); and

(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall maintain a current list of licensed employees involved in the practice of pharmacy at the facility. The list shall include individual licensee names, license classifications, license numbers, and license expiration dates. The list shall be readily retrievable for inspection by the Division and may be maintained in paper or electronic form.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) A pharmacy shall not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility.

(8) Only a licensed Utah pharmacist, DMP or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility or parent company shall maintain a record for not less than 5 years of the initials or identification codes that identify each dispensing pharmacist or DMP by name. The initials or identification code shall be unique to ensure that each pharmacist or DMP can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) that has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist, DMP, or DMP designee to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.

(12) A pharmacist, DMP or other responsible individual shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy does not store drugs in a locked cabinet and has a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(8) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following

shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-614f. Operating Standards - Class A, B, D, and E - Central Prescription Processing and Filling.

In accordance with Subsection 58-17b-601(1), the following operating standards apply to Class A, Class B, Class D and Class E pharmacies that engage in central prescription processing or central prescription filling. The operating standards include:

(1) A pharmacy may perform centralized prescription processing or centralized prescription filling services for a dispensing pharmacy if the parties:

(a) have common ownership or common administrative control; or

(b) have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

(2) The parties performing or contracting for centralized prescription processing or filling services shall maintain a policy and procedures manual, and documentation of implementation, which shall be made available to the Division upon inspection and which includes the following:

(a) a description of how the parties will comply with federal and state laws and regulations;

(b) appropriate records to identify the responsible pharmacists and the dispensing and counseling process;

(c) a mechanism for tracking the prescription drug order during each step in the dispensing process;

(d) a description of adequate security to protect the integrity and prevent the illegal use or disclosure of protected health information; and

(e) a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer.

In accordance with Subsections 58-17b-102(47) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Each pharmaceutical wholesaler or manufacturer that distributes or manufactures drugs or medical devices in Utah shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved:

(a) prescription drugs or prescription drugs that are co-licensed products satisfy the requirement in Subsection (1) by registering their establishment with the FDA pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205 including any amendments thereto, to the Division; or

(b) devices or devices that are co-licensed products, including products packaged with devices, such as convenience kits, that are exempt from the definition of transaction in 21 USC sec. 360eee (24)(B)(xii-xvi) satisfy the requirement in Subsection (1) by registering their establishment with the FDA pursuant to 21 CFR.

(3) An applicant for licensure as a pharmaceutical wholesale distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state where the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily

operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(7) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(8) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(9) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions that are outside of established limits.

(10) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form; and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(11) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for

identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(12) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(13) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102(19)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(14) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(15) Each facility shall establish, maintain and adhere to written policies and procedures that shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(16) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(17) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(18) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(19) A Class C pharmacy shall not be located in the same building as a separately licensed Class A, B, D, or E pharmacy unless the two pharmacies are located in different suites as recognized by the United States Postal Service. Two Class C pharmacies may be located at the same address in the same suite if the pharmacies:

(a) are under the same ownership;

(b) have processes and systems for separating and securing all aspects of the operation; and

(c) have traceability with a clear audit trail that distinguishes a pharmacy's purchases and distributions.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds shall follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol that includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs to be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds shall follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards - Animal Control or Animal Narcotic Detection Training.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal control or animal narcotic detection training facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia, immobilization, or narcotic detection training of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia, immobilization, or narcotic detection training purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security that limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal control or animal narcotic detection training facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval that include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia, immobilization, or narcotic detection training of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

R156-17b-617d. Class E Pharmacy Operating Standards-Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such as way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, April 1, 2012 edition, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations that are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership when one of the following occurs:

(i) a change in entity type; or

(ii) the sale or transfer of 51% or more of an entity's ownership or membership interest to another individual or entity.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(3) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and

administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

R156-17b-622. Standards - Dispensing Training Program.

(1) In accordance with Subsection R156-17b-102(17), a formal or on-the-job dispensing training program completed by a DMP designee is one that covers the following topics to the extent that the topics are relevant and current to the DMP practice where the DMP designee is employed:

(a) role of the DMP designee;

(b) laws affecting prescription drug dispensing;

(c) pharmacology including the identification of drugs by trade and generic names, and therapeutic classifications;

(d) pharmaceutical terminology, abbreviations and symbols;

(e) pharmaceutical calculations;

(f) drug packaging and labeling;

(g) computer applications in the pharmacy;

(h) sterile and non-sterile compounding;

(i) medication errors and safety;

(j) prescription and order entry and fill process;

(k) pharmacy inventory management; and

(l) pharmacy billing and reimbursement.

(2) Documentation demonstrating successful completion of a formal or on-the-job dispensing training program shall include the following information:

(a) name of individual trained;

(b) name of individual or entity that provided training;

(c) list of topics covered during the training program; and

(d) training completion date.

R156-17b-623. Standards - Approved Cosmetic Drugs and Injectable Weight Loss Drugs for Dispensing Medical Practitioners.

(1) A cosmetic drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to Latisse.

(2) An injectable weight loss drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to

human chorionic gonadotropin.

R156-17b-624. Operating Standards. Repackaged or Compounded Prescription Drugs - Sale to a Practitioner for Office Use.

Pursuant to Section 58-17b-624, a pharmacy may repackage or compound a prescription drug for sale to a practitioner for office use provided that it is in compliance with all applicable federal and state laws and regulations regarding the practice of pharmacy, including, but not limited to the Food, Drug, and Cosmetic Act, 21 U.S.C.A 301 et seq.

KEY: pharmacists, licensing, pharmacies
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58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.
R156-22-101. Title.

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is as defined in the State Construction and Fire Codes adopted under Title 15A.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering", as used in Subsection 58-22-102(9), and "engineering work as is incidental to the practice of architecture", as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work on a building classified for not greater than 49 occupants as determined in the State Construction and Fire Codes adopted under Title 15A;

(e) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in 1604.5 of the 2009 International Building Code.

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

(8) "NCEES FE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Engineering Examination.

(9) "NCEES FS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Surveying Examination.

(10) "NCEES PE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice of Engineering Examination.

(11) "NCEES PS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice in Surveying Examination.

(12) "NCEES SE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Structural Engineering Examination.

(13) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

(14) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any jurisdiction that is a member of the NCEES.

(15) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(16) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology(ABET, Inc.).

(17) "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 22.

R156-22-104. Organization - Relationship to Rule R156-1.

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

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the

combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined by the NCEES Credentials Evaluations to fulfill the required curricular content of the NCEES Engineering Education Standard. Deficiencies in course work reflected in the credential evaluation may be satisfied by completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an applicant applying for licensure as a professional land surveyor shall verify completion of one of the following land surveying programs affiliated with an institution that is recognized by the Council for Higher Education Accreditation (CHEA) and approved by the Division in collaboration with the Board:

(a) an associates in applied science degree in land surveying or geomatics;

(b) a bachelors, masters or doctorate degree in land surveying or geomatics;

(c) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics comprised of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying or geomatics which shall include the following courses:

(i) successful completion of a minimum of one course in each of the following content areas:

(A) boundary law;

(B) writing legal descriptions;

(C) photogrammetry;

(D) public land survey system;

(E) studies in land records or land record systems; and

(F) surveying field techniques; and

(ii) completion of the remainder of the 30 semester hours or 42 quarter hours from any or all of the following content areas:

(A) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;

(B) control systems;

(C) drafting, not to exceed six semester hours or eight quarter hours;

(D) geodesy;

(E) geographic information systems;

(F) global positioning systems;

(G) land development; and

(H) survey instrumentation; or

(d) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics that does not include some of the course work specified in (c)(i) or (ii), or both, as part of the degree program, provided that the deficient requirements specified in (c)(i) or (ii), or both, have been completed post degree; and

(e) if the degree was earned in a foreign country, the land surveying curriculum shall be determined by the NCEES Credential Evaluations to fulfill the required curricular content of the NCEES Education Standard. Deficiencies in course work reflected in the credential evaluation may be satisfied by completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the Board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit:

(i) at least one verification from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for; or

(ii) if a person verifying the applicant's credentials is not licensed in the profession:

(A) at least one verification from the unlicensed person; and

(B) a written explanation as to why the unlicensed person is best qualified to verify the applicant's knowledge, ability and competence to practice in the profession applied for.

(k) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or

consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall submit verification of qualifying experience in accordance with the following:

(i) The experience shall be obtained after meeting the education requirement.

(ii) The experience shall be supervised by one or more licensed professional engineers.

(iii) The experience shall be certified by the licensed professional engineer who provided the supervision.

(iv) The experience shall include a minimum of four years of full-time or equivalent part-time experience in professional engineering, except as provided in Subsection (b).

(b) Credit toward meeting the experience requirement may be granted as follows:

(i) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(ii) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(iii) A maximum of one year of qualifying experience may be granted for completing a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(iv) A maximum of two years of qualifying experience may be granted for completing a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(c) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(d) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of qualifying experience in accordance with the following:

(i) The experience shall be obtained after meeting the education requirement.

(ii) The experience shall be supervised by one or more licensed professional structural engineers.

(iii) The experience shall be certified by the licensed professional structural engineer who provided the supervision.

(iv) The experience shall include a minimum of three years of full-time or equivalent part-time experience in professional structural engineering.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(d), each applicant for licensure as a professional land surveyor shall submit verification of qualifying experience in accordance with the following:

(i) The experience may be obtained before, during or after completing the education requirement.

(ii) The experience shall be supervised by one or more licensed professional land surveyors.

(iii) The experience shall be certified by the licensed

professional land surveyor who provided the supervision.

(iv) The experience shall include experience in professional land surveying in the following content areas:

(A) experience specific to field surveying with actual "hands on" surveying, including all of the following:

(I) operation of various instrumentation;

(II) review and understanding of plan and plat data;

(III) public land survey systems;

(IV) calculations;

(V) traverse;

(VI) staking procedures;

(VII) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(B) experience specific to office surveying, including all of the following:

(I) drafting (includes computer plots and layout);

(II) reduction of notes and field survey data;

(III) research of public records;

(IV) preparation and evaluation of legal descriptions; and

(V) preparation of survey related drawings, plats and record of survey maps.

(v) The amount of experience shall be in accordance with one of the following:

(A) Each applicant having graduated and received an associates degree in land surveying or geomatics shall complete a minimum of six years of experience as follows:

(I) three years of experience that complies with Subsection (4a)(a)(iv)(A); and

(II) three years of experience that complies with Subsection (4)(a)(iv)(B).

(B) Each applicant having graduated and received a bachelors degree in land surveying or geomatics shall complete a minimum of four years of qualifying experience as follows:

(A) two years of qualifying experience that complies with Subsection (4)(a)(iv)(A); and

(B) two years of qualifying experience that complies with Subsection (4)(a)(iv)(B).

(vi) Each applicant having graduated and received a masters degree in land surveying or geomatics shall complete a minimum of three years of qualifying experience as follows:

(A) one and a half years of qualifying experience that complies with Subsection (4)(a)(iv)(A); and

(B) one and a half years of qualifying experience that complies with Subsection (4)(a)(iv)(B).

(vii) Each applicant having graduated and received a doctorate degree in land surveying or geomatics shall complete a minimum of two years of qualifying experience as follows:

(A) one year of qualifying experience that complies with Subsection (4)(a)(iv)(A); and

(B) one year of qualifying experience that complies with Subsection (4)(a)(iv)(B).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination:

(A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering; or

(B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

(ii) the NCEES PE examination with a passing score as established by the NCEES; or

(iii) the NCEES SE examination with a passing score as established by the NCEES.

(b) If an applicant was approved by the Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant shall successfully complete the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES; and

(ii)(A) the NCEES SE examination with a passing score as established by the NCEES;

(B) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;

(C) an equivalent 16-hour state written examination with a passing score; or

(D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.

(b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant shall complete two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:

(A) no sooner than 30 days following any failure, up to three failures; and

(B) no sooner than six months following any failure thereafter.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant shall complete the education requirement set forth in Subsection R156-22-302b(2).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the Board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 10 years preceding the date of the license application, and who was not required to pass the NCEES PE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the Board may waive either the NCEES FS examination or the NCEES PS examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FS examination or the NCEES PS examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on March 31 of each odd numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall complete not fewer than 30 hours of qualified professional education directly related to the ethics, business and technical content aimed at maintaining, improving, or expanding the skills and knowledge relevant to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

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

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 15 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of five hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of ten hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than five of the ten hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

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

(6) If a licensee exceeds the 30 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 15 hours of qualified continuing professional education into the next two year period.

(7) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(8) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 30 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

(9) The Division may waive continuing education in accordance with Section R156-1-308d.

R156-22-305. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the professional engineer, professional structural engineer or professional land surveyor licensee shall not engage in the profession for which the license was issued while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide

documentation that the licensee, within two years of the license being reactivated, completed 30 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing, in the performance of services for clients, employers, and customers to be cognizant that the first and foremost responsibility is to the public welfare;

(5) failing to hold paramount the duty to safeguard life, health, property and public welfare by approving and sealing only those design documents and surveys that conform to accepted engineering and surveying standards;

(6) failing to notify an employer, client, or other such authority as may be appropriate when the licensee's professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered.

(7) failing to be objective and truthful, or failing to include all relevant and pertinent information, in professional reports, statements, or testimony;

(8) expressing a professional opinion publicly when it is not founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter;

(9) issuing statements, criticisms, or arguments on technical matters in circumstances where such statements, arguments or criticisms, are inspired or paid for by interested parties, unless the licensee explicitly identifies the interested parties on whose behalf the licensee is speaking and reveals any interest the licensee has in the matters;

(10) permitting the use of the licensee's name or the licensee's firm name by, or associating in business ventures with, any person or firm that is engaging in fraudulent or dishonest business or professional practices;

(11) having knowledge of possible violations of any of these rules of professional conduct, and failing to provide the Division with the information and assistance necessary to make a final determination of such violation;

(12) accepting and undertaking assignments when not qualified by education, experience and training, or that exceed the licensee's competency and ability in the specific technical fields of engineering or surveying involved;

(13) affixing a signature or seal to any plans or documents dealing with subject matter in which the licensee lacks competence, or to any such plan or document not prepared under the licensee's responsible charge;

(14) failing to ensure, when accepting assignments for coordination of an entire project, that each design segment is signed and sealed by the licensee responsible for preparation of that design segment;

(15) revealing facts, data or information obtained in a professional capacity without the prior consent of the client or employer, except as authorized or required by law;

(16) soliciting or accepting gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients;

(17) failing to make full prior disclosures to employers or clients of potential conflicts of interest or other circumstances that could influence or appear to influence the licensee's judgment or the quality of the licensee's service;

(18) accepting compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties;

(19) soliciting or accepting a professional contract from a government body with respect to which a principle or officer of the licensee's organization serves as a member;

(20) if serving as a member, advisor, or employee of a government body or department while also serving as the principal or employee of a private concern, participating in decisions with respect to professional services offered or provided by the private concern to the governmental body with respect to which the licensee services;

(21) falsifying or permitting representation or exaggeration of the academic or professional qualifications, the degree of responsibility in prior assignments, or the complexity of prior assignments, of the licensee or the licensee's associates;

(22) misrepresenting pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments, in presentations incident to the solicitation of employment or business;

(23) offering, giving, soliciting, or receiving, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure work, or making any political contribution with the intent to influence the award of a contract by public authority;

(24) attempting to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, or indiscriminately criticizing another licensee's work;

(25) receiving gratuities from material, product, or services suppliers for specifying or endorsing their goods or services; and

(26) failing to fully disclose and obtain consent in writing of the principal employer and all interested parties prior to accepting or engaging in supplemental professional engineering, structural engineering, or land surveying services.

R156-22-503. Administrative Penalties.

(1) In accordance with Subsection 58-22-503, the following fine schedule shall apply to citations issued under Title 58, Chapters 1 and 22:

TABLE

FINE SCHEDULE

Violation	First Offense	Second Offense
58-1-501(1)(a)	$ 800.00	$1,600.00
58-1-501(1)(b)	$1,000.00	$2,000.00
58-1-501(1)(c)	$1,000.00	$2,000.00
58-1-501(1)(d)	$1,000.00	$2,000.00
58-22-501(1)	$ 800.00	$1,600.00
58-22-501(2)	$ 800.00	$1,600.00
58-22-501(3)	$ 800.00	$1,600.00
58-22-501(4)	$ 800.00	$1,600.00
58-22-501(5)	$ 800.00	$1,600.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

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

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

(5) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating

circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer","Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Electronically generated signatures are acceptable.

(g) It is the responsibility of the licensee to provide adequate security when documents with electronic seals and electronic signatures are submitted. Sheets subsequent to the cover of specifications are not required to be sealed, signed and dated.

(h) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: professional land surveyors, professional engineers, professional structural engineers

October 22, 2015	**58-22-101**
Notice of Continuation June 25, 2012	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-86. State Certification of Commercial Interior Designers Act Rule.
R156-86-101. Title.

This rule is known as the "State Certification of Commercial Interior Designers Act Rule."

R156-86-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 86, as used in Title 58, Chapters 1 and 86, or this rule:

(1) "ASID" means the American Society of Interior Design.

(2) "IDCEC" means the Interior Design Continuing Education Council.

(3) "NCIDQ" means the National Council for Interior Design Qualification.

(4) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 86, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-86-301.

R156-86-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) and Section 58-86-103 to enable the Division to administer Title 58, Chapter 86.

R156-86-104. Organization - Relationship to Rule R156-1.

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

R156-86-202. Qualifications for State Certification - Exam Requirement.

In accordance with Subsection 58-86-202(3)(b), the exam requirement for certification under this title is passing all sections of the NCIDQ examination established by the Council for Interior Design Qualification.

R156-86-203. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to certified registrants under Title 58, Chapter 86 is established by rule in Section R156-1-308a.

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

R156-86-204. Continuing Education for Commercial Interior Designers.

In accordance with Section 58-86-204, continuing education shall be:

(1) limited to continuing education courses offered by IDCEC; and

(2) designated by IDCEC as "Health, Safety, Welfare" courses.

R156-86-301. Unprofessional Conduct.

"Unprofessional conduct" includes failing to conform to the generally accepted and recognized standards of the profession including those established in the December 2013 edition of the "ASID Code of Ethics and Professional Conduct", which is hereby incorporated by reference.

KEY: licensing, commercial interior designers
July 11, 2016 **58-1-106(1)(a)**
58-1-202(1)(a)
58-86-101

R277. Education, Administration.
R277-477. Distributions of Funds from the Interest and Dividends Account and Administration of the School LAND Trust Program.
R277-477-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53A-16-101.5(4), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The Board is the primary beneficiary representative and advocate for the beneficiaries of the School Trust corpus and the School LAND Trust Program.

(3) The purpose of this rule is to:

(a) provide financial resources to a public school to implement a component of a school's improvement plan or charter document in order to enhance and improve student academic achievement;

(b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust Program funds allocated to the school;

(c) provide direction in the distribution of funds from the Interest and Dividends Account, as funded in Subsection 53A-16-101.5(3);

(d) provide for appropriate and adequate oversight of the expenditure and use of funds by a designated local board of education, an approving entity, and the Board;

(e) provide for proper allocation of funds as stated in Subsections 53A-16-101.5(3) and (4), and the appropriate and timely distribution of the funds;

(f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and

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

R277-477-2. Definitions.

(1) "Approving entity" means an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school.

(2)(a) "Charter trust land council" means a council comprised of a two person majority of elected parents of students attending the charter school convened to act in lieu of the school community council for the charter school.

(b) "Charter trust land council" includes a charter school governing board if:

(i) the council meets the two-parent majority requirement; and

(ii) the charter school governing board chooses to serve as the charter trust land council.

(3) "Council" means a school community council or a charter trust land council.

(4) "Digital citizenship" means the same as that term is defined in Section 53A-1a-108.

(5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.

(6) "Funds" means interest and dividends income as defined in Subsection 53A-16-101.5(3).

(7) "Interest and Dividends Account" means the restricted account within the Uniform School Fund created under Subsection 53A-16-101(2).

(8) "Most critical academic need" means an academic need identified in a school's improvement plan or school's charter.

(9)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes the director of a charter school.

(10) "Satellite charter school" has the same meaning as that term is defined in R277-482.

(11) "School Children's Trust Director" means the Director appointed by the Board under Section 53A-16-101.6.

(12) "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of a school district, charter school, or USDB.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

(1) A public school receiving School LAND Trust Program funds shall have:

(a) a school community council as required by Section 53A-1a-108 and Rule R277-491;

(b) a charter school trust land council as required by Subsection 53A-16-101.5(9); or

(c) an approved exemption under this rule.

(2) A public school receiving School LAND Trust Program funds shall submit a principal assurance form, as described in Section R277-491-5 and Subsection 53A-16-101.5(5)(c), prior to the public school receiving a distribution of School LAND Trust Program funds.

(3) A charter school that elects to receive School LAND Trust funds shall:

(a) have a charter trust land council;

(b) be subject to Section 53A-1a-108.1 if the charter trust land council is not a charter school governing board; and

(c) receive training about Section 53A-1a-108.1.

(4) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in Subsection 53A-16-101.5(9) upon application to the Board if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

(5) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan to the School Children's Trust Section on the School LAND Trust website:

(a) no later than April 1; or

(b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

(6)(a) An approving entity:

(i) shall consider a plan annually; and

(ii) may approve or disapprove a school plan.

(b) If an approving entity does not approve a plan, the approving entity shall:

(i) provide a written explanation why the approving entity did not approve the plan; and

(ii) request that the school revise the plan, consistent with Section 53A-16-101.5.

(7)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the School Children's Trust Section annually through the School LAND Trust website using the form provided.

(b) The Board may grant an exemption from a school using the Superintendent-provided form, described in Subsection (7)(a), on a case-by-case basis.

(8) In addition to the requirements of Subsection (6), the School LAND Trust plan described in Subsection (7)(a) shall include the date the council voted to approve the plan.

(9)(a) The principal of a school shall ensure that a council member has an opportunity to provide a signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) The principal shall collect a council member's signature, as described in Subsection (9)(a), digitally or through a paper form created by the Membership Form on the website and uploaded to the database.

(c) An LEA or district school, upon the permission of the LEA's governing board, may design the LEA or district school's own form to collect the information required by this Subsection (9).

(10)(a) An approving entity shall establish a timeline, including a deadline, for a school to submit a school's School LAND Trust plan.

(b) A timeline described in Subsection (10)(a) shall:

(i) require a school's School LAND Trust plan to be submitted to the approving entity with sufficient time so that the approving entity may approve the school's School LAND Trust plan no later than May 15 of each year; and

(ii) allow sufficient time for a council to reconsider and amend the council's School LAND Trust plan if the approving entity rejects the school's plan and still allow the school to meet the May 15 approving entity's approval deadline.

(c) After an approving entity has completed the approving entity's review, the approving entity shall notify the School Children's Trust Section that the review is complete.

(11)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (11)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement.

(b) The approving entity shall determine whether a School LAND Trust plan is consistent with the approving entity's pedagogy, programs, and curriculum.

(c) Prior to approving a School LAND Trust plan, the president or chair of the approving entity shall provide training annually on the requirements of Section 53A-16-101.5 to the members of the approving entity.

(12)(a) After receiving the notice described in Subsection (10)(c), the School Children's Trust Section shall review each School LAND Trust plan for compliance with the law governing School LAND Trust plans.

(b) The School Children's Trust Section shall report back to the approving entity concerning which School LAND Trust plans were found to be out of compliance with the law.

(c) An approving entity shall ensure that a School LAND Trust plan that is found to be out of compliance with the law by the School Children's Trust Section is amended or revised by the council to bring the school's School LAND Trust plan into compliance with the law.

(13) If an approving entity fails to comply with Subsection (12)(c), the School Children's Trust Director shall report the failure to the Audit Committee of the Board as described in Section R277-477-9.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Parents, teachers, and the principal, in collaboration with an approving entity, shall use School LAND Trust Program funds in data-driven and evidence-based ways to improve educational outcomes.

(2) School LAND Trust Program expenditures are required to have a direct impact on the instruction of students in the particular school's areas of most critical academic need.

(3) A school may not use School LAND Trust Program funds for the following:

(a) to cover the fixed costs of doing business;

(b) for construction, maintenance, facilities, overhead, security, or athletics; or

(c) to pay for non-academic in-school, co-curricular, or extracurricular activities.

(4) A school district or local school board may not require a council or school to spend the school's School LAND Trust Program funds on a specific use or set of uses.

(5)(a) A council may budget and spend no more than the lesser of the following for in-school civic and character education, including student leadership skills training and positive behavior intervention:

(i) $5,000; or

(ii) 20% of the school's annual allocation of School LAND Trust Program funds.

(b) A school may designate School LAND Trust Program funds for an in-school civic or character education program or activity only if the plan clearly describes how the program or activity has a direct impact of the instruction of students in school's areas of most critical academic need.

(c) A school may use a portion of the school's School LAND Trust Program funds to provide digital citizenship training as described in Section 53A-1a-108.

(6) Notwithstanding other provisions in this rule, a school may use funds as needed to implement a student's Individualized Education Plan.

(7) Student incentives implemented as part of an academic goal in the School LAND Trust Program may not exceed $2 per awarded student in an academic school year.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1)(a) A local school board or charter school governing board shall report the prior year expenditure of distributions for each school.

(b) The total expenditures each year described in Subsection (1)(a) may not be greater than the total available funds for any school or school district.

(c) A school district shall adjust the current year distribution of funds received from the School LAND Trust Program as described in Section 53A-16-101.5, as necessary to maintain an equal per student distribution within a school district based on school openings and closings, boundary changes, and other enrollment changes occurring after the fall enrollment report.

(2) A charter school and each of the charter school's satellite charter schools are a single LEA for purposes of public school funding.

(3)(a) For purposes of this Subsection (3) and Subsection (4), "qualifying charter school" means a charter school that:

(i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (2)(c); and

(ii) is not a newly opening charter school as described in Subsection (3).

(b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (2).

(c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

(i) an amount equal to the total funds available for all charter schools; and

(ii) at least 0.4%.

(d) After the Superintendent distributes the amount described in Subsection (2)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

(4)(a) The Superintendent shall distribute an amount of funds to a newly opening charter school that is equal to the greater of:

(i) the base payment described in Subsection (2)(c); or

(ii) a per pupil amount based on the newly opened charter

school's projected October 1 enrollment count.

(b) The Superintendent shall increase or decrease a newly opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

(5) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the USOE shall retain the funds allocated for that school and include those funds in the statewide distribution for the following school year.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

(1) A school shall implement a plan as approved.

(2)(a) The principal shall submit a plan amendment authorized by Subsection 53A-16-101.5(6)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

(b) The approving entity shall:

(i) consider the amendment for approval; and

(ii) approve an amendment before the school uses funds according to the amendment.

(c) The School Children's Trust Section shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

(3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

(b) The USOE shall consider a district or school with a consistently large carryover balance over multiple years as not making adequate and appropriate progress on an approved plan.

(c) The Board may take corrective action to remedy excessive carryover balances as outlined in Section R277-477-9.

(4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

(a) the entity has reviewed the plan; and

(b) the plan meets the requirements of statute and rule.

(5)(a) A district or charter school business official shall enter prior year audited expenditures by specific category on the School LAND Trust website on or before October 1.

(b) The expenditure data shall appear in the final report submitted online by a principal, as required by Section 53A-16-101.5.

(6) A principal shall submit a final report on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust Section to Review Compliance.

(1)(a) The School Children's Trust Section shall review each school's final report for consistency with the approved school plan.

(b) The School Children's Trust Section shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the statute, rule, or the school's approved plan.

(c) The School Children's Trust Section shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board, as applicable.

(2) The School Children's Trust Section may visit a school receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

(3)(a) The School Children's Trust Director shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

(b) The School Children's Trust Director shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

(c) After receiving the report described in Subsection (3)(b) and any other relevant information requested by the committee, the Board Audit Committee may make a determination regarding questioned expenditures and corrective action as outlined in Section R277-477-9.

R277-477-8. School Children's Trust Director - Other Provisions.

(1)(a) The School Children's Trust Director is an employee of the Board, pursuant to Section 53A-16-101.6 and Board bylaws.

(b) The School Children's Trust Director shall report to the Board Audit Committee monthly.

(c) The School Children's Trust Director shall report day-to-day to the Superintendent or the Superintendent's designee.

(2)(a) The School Children's Trust Director shall submit a draft section budget to the Board Audit Committee annually, consistent with Subsection 53A-16-101.6(5)(a).

(b) The School Children's Trust Director shall include in the draft budget a proposed School LAND Trust Program and training schedule, as described in Subsection 53A-16-101.6(13).

(3) In addition to the duties established in Section 53A-16-101.6, the School Children's Trust Director shall:

(a) assist the Board as needed as its designee in fulfilling its duties as primary beneficiary representative for school trust lands and funds;

(b) provide independent oversight of an agency managing school trust lands and the permanent State School Fund to ensure the trust assets are managed prudently, profitably, and in the best interest of the beneficiaries;

(c) review and approve a charter school plan on behalf of the State Charter School Board;

(d) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with state statute and rule;

(e) review and approve a plan submitted by the USDB governing board as necessary; and

(f) carry out the policy direction of the Board under law and faithfully adhere to the Board-approved budget.

(4) The employees of the School Children's Trust Section report to the School Children's Trust Director.

R277-477-9. Failure to Comply with Rule.

(1) If a local school board, school district, district or charter school, or council fails to comply with the provisions of this rule, the School Children's Trust Director may report the failure to the Audit Committee of the Board.

(2) If the Audit Committee of the Board finds that any local school board, school district, district or charter school, or council failed to comply with statute or rule, the Audit Committee may recommend that the Board take any or all of the following actions:

(a) in cooperation with the local school board or charter school governing board, develop a corrective action plan for the school district, district or charter school, or council;

(b) require the school to reimburse the School LAND Trust Program for any inappropriate expenditures;

(c) reduce, eliminate, or withhold future funding; or

(d) any other necessary and appropriate corrective action.

(3) The Board may, by majority vote, take any of the actions outlined in Subsection (2) to correct or remedy a violation of statute or rule by a local school board, school district, district or charter school, or council.

KEY: schools, school community councils, trust lands funds
July 11, 2016 Art X Sec 3
Notice of Continuation August 13, 2015 53A-16-101.5(4)
53A-1-401

R277. Education, Administration.
R277-491. School Community Councils.
R277-491-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.1;

(b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;

(c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;

(d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;

(e) increase public awareness of:

(i) school trust lands;

(ii) the permanent State School Fund; and

(iii) educational excellence; and

(f) enforce compliance with the laws governing a school community council.

R277-491-2. Definitions.

(1) "Local school board" means the locally elected school board designated in Section 53A-3-101.

(2)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes a specific designee of the principal.

(3) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.

(4) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

(1) In addition to the election notice requirements of Subsection 53A-1a-108(5)(c), the principal shall provide notice of:

(a) the location where a ballot may be cast; and

(b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.

(2)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.

(b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.

(3)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot.

(b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.

(4) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.

(5)(a) A public school that is a secure facility, juvenile detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

(i) recruit members;

(ii) have meetings;

(iii) publicize the opportunity to serve on the council; and

(iv) publish election results to the school community.

(b) The local school board shall make the determination whether to grant the exemption.

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:

(a) the school community council's election;

(b) that vacancies were filled by election if necessary; and

(c) that the school community council's bylaws or procedures comply with Section 53A-1a-108, Rule R277-477, and this rule.

(2) In addition to the requirements of Subsection 53A-1a-108.1(6), each year the principal shall post the following information on the school's website:

(a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds; and

(b) the dollar amount the school receives each year from the School LAND Trust Program.

R277-491-5. School Community Council Chair Responsibilities.

(1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53A-1a-108(5)(j).

(2) The school community council chair shall:

(a) post the information required by Subsection 53A-1a-108.1(5);

(b) set the agenda for every meeting;

(c) conduct every meeting;

(d) keep written minutes of every meeting, consistent with Subsection 53A-1a-108.1(9);

(e) inform council members about resources available on the School LAND Trust Program website; and

(f) welcome and encourage public participation in school community council meetings.

(3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

(1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53A-1a-108.1(10).

(b) The rules of order and procedure shall outline the process for:

(i) selecting a chair and vice chair;

(ii) removing from office a member who moves away or fails to attend meetings regularly; and

(iii) a member to declare a conflict of interest if required by the local school board's policy.

(2) The school community council shall:

(a) report on a plan, program, or expenditure at least annually to the local school board; and

(b) encourage participation on the school community council by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current practices used by the school district and school to facilitate the school community council's responsibilities under Subsection 53A-1a-108(3)(a).

(b) The report described in Subsection (3)(a) shall include:

(i) information concerning internet filtering protocols for school and district devices that access the internet;

(ii) local instructional practices, monitoring, and reporting procedures; and

(iii) internet safety training required by Section 53A-1a-108.

(c) A school community council's School LAND Trust Program plan may not conflict with the school district's approved LEA plan related to a digital teaching and learning grant awarded to the school district under Title 53A, chapter 1, Part 14.

(4) A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

R277-491-7. Inapplicable to Charter Schools.

This rule does not apply to a charter school.

R277-491-8. Failure to Comply with Rule.

(1) If a local school board, school district, school, or school community council fails to comply with the provisions of this rule, the School Children's Trust Director appointed under Section 53A-16-101.6 may report the failure to the Audit Committee of the Board.

(2)(a) The Audit Committee shall allow the local school board, school district, school, or school community council to present information to the Audit Committee.

(b) The Audit Committee of the Board may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the local school board, school district, school, or school community council has not complied with statute or rule.

(3) Before the Board takes action on the Audit Committee's recommendation, the Board shall allow the local school board, school district, school, or school community council to present information to the Board.

KEY: school community councils
July 11, 2016 Art X Sec 3
Notice of Continuation August 13, 2015 53A-1-401

R277. Education, Administration.
R277-707. Enhancement for Accelerated Students Program.
R277-707-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-17a-165, which allows the Board to adopt rules for the expenditure of funds appropriated for Enhancement for Accelerated Students Program; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2)(a) The purpose of this rule is to specify the procedures for distributing funds appropriated under Section 53A-17a-165 to LEAs.

(b) The intent of this appropriation is to enhance the academic growth of students whose academic achievement is accelerated.

R277-707-2. Definitions.

(1) "Accelerated students" means children and youth whose superior academic performance or potential for accomplishment requires a differentiated and challenging instructional model

(2) Advanced placement" or "AP" courses means rigorous courses developed by the College Board where:

(a) each course is developed by a committee composed of college faculty and AP teachers, and covers the breadth of information, skills, and assignments found in the corresponding college course; and

(b) students who perform well on the AP exam may be:

(i) granted credit; or

(ii) advanced standing at participating colleges or universities.

(3) "Gifted and talented programs" means programs to:

(a) assist individual students to develop their high potential and enhance their academic growth; and

(b) identify students with outstanding abilities who are capable of high performance in the following areas:

(i) general intellectual ability;

(ii) specific academic aptitude; and

(iii) creative or productive thinking.

(4) "International Baccalaureate" or "(IB)" Program means one of the following programs established by the International Baccalaureate Organization:

(a) the Diploma Program;

(b) the Middle Years Program; or

(c) the Primary Years Program.

(5) "Weighted Pupil Unit" means the basic state funding unit.

(6) "Utah Consolidated Application" or "UCA" means the web-based grants management tool employed by the Board through which LEAs submit plans and budgets for approval by the Superintendent.

R277-707-3. Eligibility, Application, Distribution and Use of Funds.

(1) All LEAs are eligible to apply for the Enhancement for Accelerated Students Program funds using the UCA.

(2)(a) An LEA shall have a process for identifying students whose academic achievement is accelerated based upon multiple assessment instruments.

(b) These instruments shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.

(3) The distribution formula includes an allocation of money for:

(a) Advanced Placement courses:

(i) The designated funds for the advanced placement program equal 0.38 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Subsection 53A-17a-165(3).

(ii)(A) The total funds designated for the advanced placement program are divided by the total number of Advanced Placement exams passed with a grade of 3 or higher by students.

(B) This calculation results in a fixed amount per exam passed with each participating LEA receiving that amount for each exam successfully passed by one of its students.

(b) Gifted and Talented programs:

(i) The designated funds for the Gifted and Talented Program equal 0.62 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Subsection 53A-17a-165(3).

(ii) Each LEA shall receive its share of funds in the proportion that the LEA's number of weighted pupil units for kindergarten through grade twelve bears to the state total.

(iii) An LEA shall expend Gifted and Talented program funds in accordance with the UCA guidelines.

(c) IB: LEAs shall have an IB authorized program to qualify for funds.

(i) Fifty percent of the total funds designated for IB consistent with Subsection 53A-17a-165(3) shall be equally distributed among all authorized IB programs in the state.

(ii) The remaining fifty percent of allocation shall be distributed to LEAs with Diploma Programs where students scored a grade of 4 or higher on IB exams, resulting in a fixed amount of dollars per exam passed.

R277-707-4. Performance Criteria and Reports.

(1) An LEA receiving funds, as set forth in Section R277-707-3, shall be required to submit an annual evaluation report to the Superintendent consistent with Section 53A-17a-165. The report shall include the following performance criteria related to the identified students whose academic achievement is accelerated:

(a) number of identified students disaggregated by subgroups;

(b) graduation rates for identified students;

(c) number of AP classes taken, completed, and exams passed with a score of 3 or above by identified students;

(d) number of IB classes taken, completed, and exams passed with a score of 4 or above by identified students;

(e) number of Concurrent Enrollment classes taken and credit earned by identified students;

(f) ACT or SAT data, including the number of students participating, at or above the college readiness standards;

(g) gains in proficiency in language arts; and

(h) gains in proficiency in mathematics.

(2) The Superintendent shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature consistent with Subsection 53A-17a-165(6).

KEY: accelerated learning, enhancement programs

July 11, 2016	**Art X Sec 3**
Notice of Continuation May 16, 2016	**53A-17a-165**
	53A-17a-165(5)
	53A-1-401

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) New and existing Class I, II, III, IV, V, VI, and coal combustion residual (CCR) Landfills and coal combustion residual surface impoundments;

(b) Class I, II, III, IV, V, and VI Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);

(c) incinerator facilities that are regulated by Rule R315-306;

(d) land treatment disposal facilities that are regulated by Rule R315-307; and

(d) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The requirements of Sections R315-310-2 through 12 apply to each existing and new solid waste facility as indicated.

(a) The Director may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.

(b) The owner or operator, or both, where the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310;

(ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and

(iii) not accept waste at the solid waste facility prior to receiving the approval required by Subsection R315-301-5(1).

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Director for the desired class, or subclass, of landfill.

(5) Any facility that is in operation at the time that a permit is required for the facility by Subsection R315-310-1(a) and has submitted a permit application within six months of the date the facility became subject to the permit requirements of Subsection R315-310-1(a) may continue to operate during the permit review period but must meet all applicable requirements of rules R315-301 through 320 unless an alternative requirement has been approved by the Director.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Director to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Director. Two copies of the application, signed by the owner or operator and received by the Director are required before permit review can begin.

(3) Applications for a permit must be completed in the format prescribed by the Director.

(4) An application for a permit, all reports required by a permit, and other information requested by the Director shall be signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president;

(b) for a partnership or sole proprietorship: by a general partner or the proprietor;

(c) for a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

(d) by a duly authorized representative of the person above, as appropriate.

(i) A person is a duly authorized representative only if the authorization is made in writing, to the Director, by a person described in Subsections R315-310-2(4)(a), (b), or (c), as appropriate.

(ii) The authorization may specify either a named individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, director, superintendent, or other position of equivalent responsibility.

(iii) If an authorization is no longer accurate and needs to be changed because a different individual or position has responsibility for the overall operation of the facility, a new authorization that meets the requirements of Subsections R315-310-2(4)(d)(i) and (ii) shall be submitted to the Director prior to or together with any report, information, or application to be signed by the authorized representative.

(5) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(6) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(7) The owner or operator, or both, of a facility shall apply for renewal of the facility's permit every ten years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application for a new facility or a facility seeking expansion shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class IIIb, IVb, and Class VI Landfills and waste tire storage facilities, unless required by the Director, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Director of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any waste water treatment facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water

Quality;

(j) a proposed financial assurance plan that meets the requirements of Rule R315-309; and

(k) A historical and archeological identification efforts, which may include an archaeological survey conducted by a person holding a valid license to conduct surveys issued under R694-1.

(2) Public Participation Requirements.

(a) Each permit application shall provide:

(i) the name and address of all owners of property within 1,000 feet of the proposed solid waste facility; and

(ii) documentation that a notice of intent to apply for a permit for a solid waste facility has been sent to all property owners identified in Subsection R315-310-3(3)(a)(i).

(iii) the Director with the name of the local government with jurisdiction over the site and the mailing address of that local government office.

(b) The Director shall send a letter to each person identified in Subsection R315-310-3(3)(a)(i) and (iii) requesting that they reply, in writing, if they desire their name to be placed on an interested party list to receive further public information concerning the proposed facility.

(3) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The permit application for a commercial nonhazardous solid waste disposal facility shall contain the information required by Subsections 19-6-108(9) and (10).

(b) Subsequent to the issuance of a solid waste permit by the Director, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the Director that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.

(c) Construction of the solid waste disposal facility may not begin until the requirements of Subsections R315-310-3(2)(b) are met and approval to begin construction has been granted by the Director.

(d) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a), (b), and (c).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, V, and VI Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, V, and VI Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring plan that meets the requirements of Rule R315-308;

(vii) landfill gas monitoring and control that meets the requirements of Subsection R315-303-3(5);

(viii) design and location of run-on and run-off control systems;

(ix) closure and post-closure design, construction, maintenance, and land use; and

(x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground water monitoring.

(d) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of the solid waste disposal facility in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a post-closure plan to address, as appropriate for the specific landfill:

(i) site monitoring of:

(A) landfill gas on a quarterly basis until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met;

(B) ground water on a semiannual basis, or other schedule as determined by the Director, until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met; and

(C) surface water, if required, on the schedule specified by the Director and until the Director determines that the monitoring of surface water may be discontinued;

(ii) inspections of the landfill by the owner or operator:

(A) for landfills that are required to monitor landfill gas, and Class II Landfills, on a quarterly basis; and

(B) for other landfills that are not required to monitor landfill gas, on a semiannual basis;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost calculations and the funding mechanism;

(v) changes to record of title as specified by Subsection R315-302-2(6); and

(vi) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanding Class III, IV, or VI Landfill.

(1) Each application for a permit for a new Class III, IV, or VI landfill or for a permit to expand an existing Class III, IV, or VI Landfill shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the area to be served by the facility; and

(e) how the facility will meet the requirements of Rule R315-304, for a Class III Landfill, or Rule R315-305, for a Class IV or VI Landfill.

(3) Each application for a Class IIIa or Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Incinerator Facility.

(1) Each application for a new or expanding incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(ii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule;

(ii) closure costs and a financial assurance mechanism to cover the closure costs;

(iii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iv) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for a New or Expanding Waste Tire Storage Facility.

Each application for a waste tire storage facility permit shall contain the information required in Subsections R315-310-3(1)(a), (b), (c), (f), (g), (h), (k), R315-310-3(2) and Subsection R315-314-3(3).

R315-310-9. Contents of an Application for a Permit Renewal.

The owner or operator, or both, where the owner and operator are not the same person, of each existing facility who

intend to have the facility continue to operate, shall apply for a renewal of the permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, -7, or -8, as appropriate. Applicable information, that was submitted to the Director as part of a previous permit application, may be copied and included in the permit renewal application so that all required information is contained in one document. The information submitted shall reflect the current operation, monitoring, closure, post-closure, and all other aspects of the facility as currently established at the time of the renewal application submittle.

R315-310-10. Contents of an Application for a Permit for a Facility in Post-Closure Care.

The application for a Post-Closure Care permit shall contain the applicable information required in Section R315-310-3 and documentation as to how the facility will meet the requirements of Section R315-302-3(5) and (6).

R315-310-11. Permit Transfer.

(1) A permit may not be transferred without approval from the Director, nor shall a permit be transferred from one property to another.

(2) The new owner or operator shall submit to the Director:

(a) A revised permit application no later than 60 days prior to the scheduled change and

(b) A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees.

(3) The new permittee shall:

(a) assume permit requirements and all financial responsibility;

(b) provide adequate documentation that the permittee has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit and R315-309 for the operation of the facility.

(4) When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Rule R315-309 until the new owner or operator has demonstrated that it is complying with the requirements of that rule.

(5) An application for permit transfer may be denied if the Director finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Director;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

R315-310-12. Contents of a Permit Application for a New or Expanding Coal Combustion Residual Landfill and Coal Combustion Residual Surface Impoundment.

Each application for a coal combustion residual landfill and coal combustion residual surface impoundment permit shall contain the information required in Subsections R315-310-3(1)(a) and (k), and Section R315-319.

KEY: solid waste management, waste disposal

July 15, 2016	**19-6-105**
Notice of Continuation February 13, 2013	**19-6-108**
	19-6-109
	40 CFR 258

R357. Governor, Economic Development.

R357-1. Rural Fast Track Program.

R357-1-1. Authority.

(1) Subsection 63N-3-104 permits the administrator to make rules governing the following aspects of the Rural Fast Track Program:

(a) The content of the application form;

(b) Who qualifies as an employee; and

(c) The verification procedure.

R357-1-2. Definitions.

(1) "Administrator" means the Director of the Governor's Office of Economic Development or the Director's designee.

(2) "Office" means the Utah Governor's Office of Economic Development (GOED).

(3) "Baseline employment number" means the same as the term is used in part R357-1-5(4)(a) of this section.

(4) "Full Time Employee" (FTE) means an employee who works at least 30 hours per week at the location of the Rural Fast Track project.

(5) "In business" means the business was legally formed, and is measured from the date upon which a business or company was formed or created as shown on articles of incorporation, certificate of existence, state registration, or other similar, legally sufficient document.

(6) "Leisure and Hospitality" has the same meaning as the definition in the North American Industry Classification System (NAICS) Codes.

(7) "New incremental job" means a Full Time Employee position created in addition to the baseline employment number.

(8) "Production agriculture" means the act of cultivating land and rearing crops and livestock.

(9) "Professional services" means services that are provided by a certified member of a professional body, e.g. accounting, legal, or medical.

(10) "Profitability" means a positive net income as demonstrated on tax returns for the most recent two years for which tax returns are available.

(a) If net income shown on tax returns is less than $1, the applicant company may still demonstrate profitability by providing receipts to ORD that show capital improvements made in company infrastructure for the corresponding tax years.

(b) Qualifying capital investment receipts plus net income must be greater than $1 to demonstrate profitability. Accelerated depreciation may not be used in this calculation.

(11) "Resort community" means a municipality in which the transient room capacity as defined in Utah Code Section 59-12-405 is greater than or equal to 66% of the municipality's permanent census population.

(12) "Retail" means a business or person that sells goods to an end-user or consumer.

(13) "Small company" means the same as the definition for small business as set forth by the United States Small Business Administration's Table of Small Business Size Standards Match to North American Industry Classification System (NAICS) codes.

(14) "Specialized vehicle" means a vehicle which is used exclusively for business purposes, and has been modified or specialized through the addition of equipment, and other permanently attached tools, and performs specific and specialized functions.

(15) "Unique project" means a project that adds a new product, service, or process distinct and separate from any project for which the applicant company has previously received funding under this program.

(16) "Value-added agriculture" is a process which results in a change in the physical state or form of an agricultural product in a manner that enhances its value and expands the customer base of the product, e.g. milling wheat into flour or

making strawberries into jam.

R357-1-3. Content of the Application.

(1) An application shall include the following information:

(a) Company name;

(b) Federal tax ID number;

(c) Primary North American Industry Classification System (NAICS) Code for the applicant's business;

(d) Mailing and street address;

(e) Telephone number;

(f) Date that company was created;

(g) The following additional information shall be provided in a form prescribed by the Office:

(i) The number of full time employees employed by the applicant for the prior two calendar years; and

(ii) Wages paid to all of the applicant's employees for the prior two calendar years.

(iii) Articles of incorporation, certificate of existence, state registration, or other document showing the date the business was legally formed;

(iv) Applicant Company must demonstrate profitability for the previous 2 years, through the submission of Applicant's State and Federal tax returns for the previous two tax cycles;

(v) If net income from tax returns is less than $1:

(vi) Receipts for capital improvements during tax years for which Applicant provided tax returns;

(vii) Letter of Support from local Economic Development Director (EDD) or elected official over economic development in the county, tribe, or city where the business is located;

(viii) A report issued by the Department of Workforce Services documenting the number of employees at the company and the total wages paid to employees of the company for the past 2 calendar years; and

(ix) If an applicant is seeking a grant pursuant to Utah Code Section 63N-3-104(5)(d), the applicant shall submit a detailed project description that demonstrates what the project is, how the project will benefit the company and how many new full-time employees applicant will hire as a result of the project.

(x) Any other information as requested by Office of Rural Development (ORD), or the Governor's Rural Partnership Board (GRPB), or the Office.

R357-1-4. Application and Approval Procedure.

(1) Pre-Application

(a) All companies must fill out and submit a pre-application that shall be reviewed, and approved by GOED staff, before proceeding to a full application.

a. The Pre-Application process will be used to determine eligibility and sufficiency of documentation.

(2) Full Application

(a) If applicant is approved to proceed to a full application, full applications shall undergo a comprehensive internal review by ORD and may be sent to the Governor's Rural Partnership Board (GRPB) executive committee for endorsement.

(b) Applications may also be reviewed and endorsed by the Governor's Office of Economic Development (GOED) Board.

(c) All applications must have final approval from the administrator.

(3) Company may not commence performance on the contract until the Rural Fast Track contract agreement is completely executed without prior written permission from the administrator.

R357-1-5. Employees.

(1) When counting FTEs, if an FTE has its employment with Applicant terminated for any reason before completion of the applicable Rural Fast Track Disbursement Period, another employee otherwise meeting the requirements described above may be promptly hired to fill the terminated FTE's position and complete the year of qualifying full-time employment. In such case, applicant and the office would count the combined contribution of these two (2) full time employees as one (1) FTE.

(a) A replacement employee must be hired within 60 days of the first employee's termination date for the position to remain qualifying for FTE purposes during a given Rural Fast Track Disbursement Period.

(2) At the time of application, the ORD Business Analyst shall establish the company's baseline employment number.

(a) The baseline employment number is the highest total number of Full Time Employees at any time during the previous 24 month period.

(3) A new incremental job may be filled by an existing employee if a new employee fills the position vacated by the current employee.

(4) Applicant Company must demonstrate at least one new incremental job above the baseline through documentation provided by the Department of Workforce Services.

R357-1-6. Grants, Loans, and Other Financial Assistance Pursuant to Utah Code Section 63N-3-104(5).

(1) Applications for grants, loans, and other financial assistance may be approved up to $50,000 if the applicant passes the verification and approval process described below.

(2) All financial assistance granted pursuant to this section shall be awarded as post-performance reimbursements.

(3) Awards will be made on a dollar for dollar matching basis up to $50,000 with the applicant providing matching funds;

(a) Awards will not be made for equipment or other qualifying items that are replacing existing items, but replacement costs may be considered as part of the total project cost;

(b) Applications for specialized vehicles may be approved on a dollar for dollar matching basis up to $25,000 with the applicant providing matching funds.

(4) Payment under this part shall be made only after qualifying expenditures are verified and a site visit is completed by ORD staff.

(5) Any subsequent applications by a company having received a Rural Fast Track award may only be considered for another grant if the second application is for a unique project and at least 18 months have passed after the most recent award was granted.

(6) ORD staff may require additional information during the grant process.

(7) Items that are not eligible for grants, loans, or other financial assistance under 63N-3-104(5) include the following:

(a) Laptop or desktop computers and other standard office equipment;

(b) Non-specialized vehicles;

(c) Bare ground;

(d) Retail, except in eligible L and H counties or resort communities; and

(e) Other items as identified by GOED, ORD, or GRPB on a case by case basis.

(f) The above ineligible items may be approved in exceptional circumstances with the written approval of the administrator.

R357-1-7. Verification.

(1) Following completion of the applicant project the ORD may conduct a site visit to the applicant company location. During that site visit ORD shall visually inspect the physical property to determine the completion of the project.

(2) Applicant shall provide to ORD documentation of all expenses related to applicant project, including, but not limited to receipts, invoices, loan documents, etc.

(3) Applicant shall provide documentation from the Department of Workforce Services demonstrating at least one new incremental job over the baseline job number.

(4) Applicant shall provide documentation detailing the salary paid to the new incremental job.

KEY: economic opportunity, job creation, rural economic development, Rural Fast Track Program
July 22, 2016 63N-3-104
Notice of Continuation April 13, 2012

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive.
R357-5-1. Authority.

(1) Subsection 63N-8-104(1) requires the office to make rules establishing the standards that a motion picture company, and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

R357-5-2. Definitions.

(1) The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-8-102.

(2) "Low Budget Film Production" means a production where a motion picture company has a maximum budget of under $500,000.

(3) "Motion Pictures" means, but is not limited to, narrative or documentary films or high definition digital production, and originally intended for commercial distribution to motion picture theaters, directly to the home video and/or DVD markets, cable television, broadcast television or video on demand.

(a) The term "Motion Picture" does not include:

(i) News;

(ii) Commercials;

(iii) Live Broadcasts;

(iv) Digital Media Products;

(v) Discrete Sporting events;

(vi) Live Coverage of other theatrical or entertainment events; or

(vii) Programs that solicit funds.

(4) "Rural Utah" means all counties of the 4th, 5th, and 6th class, and municipalities in a county of the 3rd class that has a population under 20,000 and a median household income under $70,000 as reflected in the most recently available data collected and reported by the United States Census Bureau.

(5) "Significant Percentage of cast and crew from Utah" means

(a) For productions that have less than $500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents.

(b) For productions that have more than $500,000 dollars left in state: that at least 75% of the cast and crew are Utah residents excluding extras and five principal cast.

(c) "Utah Resident" means that the individual files a Utah Resident tax return.

(6) "State-approved production" means a production that is:

(a) approved by the office and ratified by the Governor's Office of Economic Development Board; and

(b) all or a portion of the production is produced in the state.

(7) "Total budget for the product" means the total budget for Dollars left in state of pre-production, production and post-production.

(8) "Treatment" means: A written description of the production.

(9) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Development.

(10) "Utah Resident" means a person who files a Utah State Tax Return as a resident of Utah.

R357-5-3. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.

(1) A motion picture company may qualify for a motion picture incentive only if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company is making all or a portion of a motion picture in the state of Utah;

(b) The motion picture is a state approved production;

(c) The motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the office to produce its own;

(d) The motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screen shot of the logo as it appears in the credits.

(e) The motion picture company has obtained financing for at least 75% of the anticipated Dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents.

(f) The motion picture company must retain financing as set forth in subsection (e) for the life of the contract with the State.

(g) The motion picture company intends to report at least $500,000 dollars left in state if applying for a film incentive pursuant to R357-5-5(1) or a maximum of under $500,000 if applying for an incentive pursuant to R357-5-5(2);

(h) As of the date that the Office receives a completed motion picture incentive application, the motion picture production company has not started principle photography of the production in the state.

(i) If a production has initiated principal photography prior to the Office's receipt of a completed application, the application for incentive shall be denied.

(ii) An application for incentive may be submitted if the motion picture production company has initiated pre-production activities in the State of Utah, as long as principal photography has not been initiated.

(2) The motion picture incentive application shall not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) In order to receive state approval for an incentive application, a production must, in the State's sole discretion, reflect positively on the image of state of Utah.

(a) In determining whether or not a production reflects positively on the image of the state of Utah, the Office and Board may take into consideration:

(i) Whether and to what extent the motion picture promotes Utah as a tourist destination;

(ii) the overall strength and viability of the script of the production;

(iii) the industry reputation of the production or motion picture company;

(iv) the record of the motion picture company in matters of safety and responsible filmmaking; and

(v) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company;

(vi) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(vii) any other factors related to the production or the motion picture company that may reasonably affect the image of the state of Utah.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit will be weighted by a point system available on the Utah Film Commission's website and include, but are not limited to:

(i) Number of anticipated jobs in Utah;

(ii) Number of production days in Utah;

(iii) Length of employment for Utah cast and crew;

(iv) Local cast and crew wages;

(v) Other economic development that the film contributes in the State of Utah;

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(1) A treatment may only be submitted where a script for a project type is not possible for example, because the project is a documentary or reality based television show. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(a) If the applicant fails to submit a completed application prior to the submission deadline, the application may be considered with the next round of submissions.

(7) Submitting an application does not guarantee approval of a film incentive.

(a) All film incentives are subject to and contingent upon the amount of available funding and/or tax credit allocation available in the Motion Picture Restricted account;

(b) Lack of state approval shall not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

R357-5-4. Motion Picture Incentive Applications: Award for a Motion Picture Production.

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in R357-5-5.

R357-5-5. Film Categories and Conditions.

(1) Utah Motion Picture Incentive Program

(a) The Utah motion Picture Incentive program will have an incentive cap of 20% the dollars left in state, unless a higher cap is awarded pursuant to subsection (c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-3

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least $1,000,000 in qualified dollars left in state, and

(ii) 75% of cast and crew are Utah residents excluding extras and five principal cast members, or

(iii) 75% of Dollars left in state occurs in rural Utah

(2) Low Budget Film Production Incentive

(a) The Low Budget Film Production Incentives Program will provide a maximum of a 20% post performance cash rebate or tax incentive for dollars left in state by a low budget production.

(b) Low Budget Film Production Program incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-3, has a maximum budget of under $500,000, and meets following criteria:

(i) Minimum wage of 60% of area standard rates for each cast and crew member; and

(ii) 85% of cast and crew must be Utah residents;

(c) Applications for the Low Budget Film Production Incentive Program will be reviewed quarterly beginning in August of each calendar year.

(d) Awards will be made to motion picture companies based upon the scoring system outlined in the Low Budget Film Production Incentive Program application provided by UFC.

(3) For applications made under either (1) or (2), the motion picture company must provide all information and documentation to show measureable outcomes as outlined in the application for any incentive listed in R357-5-5.

R357-5-8. Funding -- Post-Performance Refundable Tax Credit.

(1) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-9. Funding -- Post-Performance Cash.

(1) The office may only issue funds appropriated by the state legislature to the Motion Picture Incentive Account to a motion picture company

(2) Post-performance cash can only be issued to the state-approved motion picture company who submits the motion picture incentive application and is approved by the office with advice from the Board.

R357-5-10. Request for Incentive Amendment.

(1) A motion picture company may request an incentive amendment only under the conditions listed in the incentive application.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

KEY: economic development, motion picture, digital media, new state revenue
July 22, 2016 63N-8-104
Notice of Continuation June 9, 2016

R357. Governor, Economic Development.
R357-15. Enterprise Zone Tax Credit.
R357-15-1. Authority.

(1) Subsection 63N-2-213(6) requires the office to make rules establishing the form and content of an application for an Enterprise Zone tax credit, the documentation required to receive an Enterprise Zone tax credit, and the administration of the program, including relevant timelines and deadlines.

R357-15-2. Definitions.

(1) The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-2-201 Utah Code Section 59-7-614.10, Section 59-10-1036, and Section 63N-2-202.

(2) "Baseline" means: The highest total number of employees employed by the applicant for the previous three years. This number will be the baseline to determine all new incremental full-time employee positions

(3) "Qualifying investment in plant, equipment, or other depreciable property" means an investment in most types of tangible property (except land), such as buildings, machinery, vehicles, furniture, and equipment that qualifies for depreciation under the Internal Revenue Service's Form 4562.

(4) "Value-added business entity" means a company that creates a change in the physical state or form of a product in a manner that enhances its value, thus expanding the customer base of the product. Examples include milling wheat into flour or making strawberries into jam.

R357-15-3. Application Form and Content.

(1) An application form will be provided by the Office and will contain the following content:

(a) General submission instructions;

(b) Types of tax credits available to be claimed;

(c) Criteria for qualification for each tax credit;

(d) Any required deadlines and relevant timelines; and

(e) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic format available to the public at business.utah.gov

(3) The application shall also be available in paper format for any person or entity that requests a paper copy via mail or telephone.

R357-15-4. Required Documentation and Verification Information.

(1) To claim any of the tax credits available under 63N-2-201 et. seq. the following basic information must be provided to the Office.

(a) Business or Individual's name that is claiming a tax credit on a Utah Tax filing submission;

(b) A contact name, email, phone number, mailing address and relevant title(s);

(c) The physical address where the business or individual is located including a screenshot of the address pinpoint within the Enterprise Zone as found on locate.utah.gov.

i. A tax credit shall not be issued if the only connection to an enterprise zone is a P.O. Box;

(d) The business or individual's tax identification number whether a federally provided Employer Identification Number (EIN) or a Social Security Number (SSN); and

(e) Additional information as required in the Application.

(2) To qualify for any of the Employment tax credits pursuant to Subsections 63N-2-213(7)(a)-(d) the following documentation and information is required:

(a) A current total of all full time employees including the total of employees as reported to the Department of Workforce Services for the last three years.

(b) The number of New Incremental Employee Positions

created above the baseline.

i. For each New Incremental Employee Position above the baseline the applicant must provide:

1. Employee Name;

2. Employee Hourly Wage and/or Annual Salary;

3. Employee Average Hours worked per week;

4. Employee Hire date;

5. If applicable, proof of employer-sponsored health insurance program if the employer pays at least 50% of the premium cost;

6. If applicable, evidence that the business entity adds value to agricultural commodities through manufacturing or processing.

a. List of sample products or processes.

7. Other documentation requested by the Office on the tax credit application.

(3) To qualify for the private capital investment tax credit under Subsections 63N-2-213(7)(e)-(f) the following documentation and information is required:

(a) If the private capital investment is for the rehabilitation of a building in an Enterprise Zone the applicant must provide:

i. The rehabilitated building's physical address

ii. Documents showing the current owner such as the deed or mortgage documents;

iii. The date the building was last occupied;

iv. A current occupancy permit or certificate;

v. Receipts and paid invoices of all rehabilitation expenses totaling the amount the tax credit is calculated from; and

1. The Office may request further documentation to verify receipts and paid invoices including accompanying bank statements.

vi. Any other documentation requested by the Office including a sworn affidavit confirming the rehabilitation costs from the owner of the building if applicant is not the owner of the building.

(b) If the private capital investment is a qualifying investment in plant, equipment, or other depreciable property in an Enterprise Zone the applicant must provide:

i. Receipts and/or loan documentation showing the entire purchase price and amount paid by the applicant.

R357-15-5. Application Review and Authorization Process for an Enterprise Zone Tax Credit.

(1) The Office shall review all submitted applications within a reasonable amount of time and approve or deny the application

(a) The Office shall review all tax credits claimed and documentation provided.

(b) The Office may request additional documentation or information if the Office determines that further verification is required.

i. Failure to comply with a request for additional documentation may result in a denial of the application.

(2) The Office will issue tax credit certificates for all tax credits for which an applicant has applied, qualified and been approved by the Office.

(a) This Office may issue a partial approval if only parts of the application are determined to qualify.

(3) The Office must provide written notice that includes its reasoning when denying any or a portion of a tax credit application.

(4) If approved in whole or in part, the Office shall provide any necessary documents and instructions, approved by the Utah Tax Commission, for claiming the tax credit.

R357-15-6. Appeal of Application Denial.

(1) A hearing contesting the denial of an application in whole or in part of an Enterprise Zone Tax Credit is designated as informal hearings.

KEY: enterprise zones, tax credits
July 22, 2016 **63N-2-213(6)**

R357. Governor, Economic Development.
R357-16. Utah Outdoor Recreation Infrastructure Grant.
R357-16-1. Authority.

(1) Subsection 63N-9-203 requires the office to make rules establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant.

R357-16-2. Definitions.

(1) Terms in these rules are defined in Utah Code Section 63N-9-102.

R357-16-3. Application Form and Submission Procedure.

(1) The application will be provided by the Office and contain the following content:

(a) General submission instructions;

(b) Grants available to be claimed including tiered amounts;

(c) Criteria for qualification of a grant;

(d) Instructions regarding a project description including timeline;

(e) Instructions for providing an outlined budget for total project cost, highlight of funds already procured for the project; and an itemized budget showing planned use of the grant funds being requested;

(f) Instructions for reporting project impacts including community and economic impacts;

(g) The application scoring system and grant tiers;

(h) Any required deadlines, reports, and relevant timelines; and

(i) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic form available to the public at business.utah.gov

(3) The application shall also be available in paper form for any person or entity that requests it.

(4) Applications must be submitted to Office of Outdoor Recreation staff on or before the specified deadline in the application.

(5) Staff will review final applications for completeness and the director of the Office of Outdoor Recreation will verify that the documentation is complete and that it meets the program criteria as outlined in statute and this rule.

(6) All completed documentations will be reviewed and awardees selected via the criteria and method as outlined in R357-16-5 and R357-16-6.

R357-16-4. Eligible Entities.

(1) Grants may be awarded to the following entities within the state of Utah:

(a) Non-profit corporations physically located within the State with a 501(c)(3) status;

(b) Municipalities;

(c) Counties; and

(d) Tribal governments.

R357-16-5. Infrastructure Project Eligibility Criteria.

(1) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed project's eligible costs. A minimum of 25% of the total project costs must be a cash match from the applicant and/or partners.

(a) The maximum grant request is dependent on available funds and will be outlined in the grant application.

(b) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(c) At least 75% of the matching funds for the project must be secured in order to apply.

(2) County Endorsement: The infrastructure project must have county approval and endorsement in writing at the time of application.

(a) An agreement signed with the county appointing a party who will maintain the recreational infrastructure may be required by the Office as a condition to receiving a grant.

(3) Public Lands: If the project is located on public lands, it must have approval from the appropriate public entity.

(a) The applicant may be required to show approval from the agency that follows the National Environmental Policy Act (NEPA) process as a condition to receiving the grant.

(4) Property Ownership: All projects must be located on land that is owned by or under the control of the applicant (e.g. local government or conservancy.)

(a) If the project crosses private property, as in the case of a trail, an agreement must be reached with the property owners.

(5) Economic Development Endorsement: The infrastructure project must have an endorsement from the local economic development office stating that the project will have the ability to attract growth and retention in the community/area and/or have the potential for increased visitation to the area.

(6) Sensitive Wildlife Areas: Applicant must coordinate with the Utah Division of Wildlife Resources (DWR) to determine if the project is located in a special management area for sensitive species such as the greater sage grouse.

(a) If the project is in or near a Sage Grouse Management Area (SGMA), the project proponent shall coordinate with DWR to make reasonable accommodations to avoid, minimize or mitigate the impacts to greater sage-grouse and their habitats.

(7) Eligible infrastructure projects may include but are not limited to:

(a) New construction of trails and trail infrastructure (e.g. bridge or tunnel);

(b) Restroom facilities near popular recreation areas;

(c) Trail facilities (e.g. trail or way finding signage, trailhead parking, kiosks, etc.);

(d) Ramp/launch site to improve water access areas along rivers for non-motorized boats (e.g. a proposed National Water trail system.;

(e) Infrastructure for wildlife viewing areas;

(f) Whitewater parks;

(g) Outdoor amphitheaters; or

(h) Yurts.

(8) Ineligible Infrastructure projects may include but are not limited to:

(a) A private business such as outdoor service concession, amusement park, ice-skating rink, tubing park, etc.;

(b) Outdoor education programming;

(c) Outdoor swimming pools;

(d) Golf Courses; or

(e) Athletic fields or courts.

R357-16-6. Outdoor Recreation Youth Program Grants Eligibility Criteria.

(1) The Office may award grants for outdoor recreation youth programs.

(2) The program must provide outdoor recreation activities for youth 18 years old or younger and include physical activities that have an element of fitness.

(3) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed program's eligible costs. A minimum of 25% of the total project costs must be a cash match from the applicant and/or partners.

(a) The maximum grant request is dependent on available funds and will be outlined in the grant application.

(b) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(c) At least 75% of the matching funds for the program must be secured in order to apply.

(d) Staff salaries may only allowed as matching costs as

outlined in the application.

(4) Applicant must demonstrate that the program increases participation in outdoor recreation among young people.

(5) The program must have clear and measurable outcomes including an action plan with clear measures to evaluate success.

(6) Applicant must outline in the application a budget of how the grant would be utilized for the program.

(7) All other found in Utah Code 63N-9, R357-16-3, and R357-16-5(3)-(8) apply to the outdoor recreation youth program grants.

R357-16-7. Method and Formula for Determining Grant Amounts.

(1) The Office shall use a weighted scoring system to analyze and award grant and grant amounts.

(a) The scoring system shall be made available in the application;

(b) The scoring system will assess and value general categories including:

i. Community need;

ii. Economic impact;

iii. Recreation value;

iv. Project readiness;

v. Improved physical and recreational access; and

vi. Location in an underserved population or area.

(2) The Office will use the scores to create a prioritization matrix ranking the applications in ascending order.

(3) The Office will give grant awards in a tiered manner with a certain number of grants available at each tier level utilizing the prioritization matrix.

(a) The Office will provide the tiered amounts and the available number of grants in each tier level in the application.

(b) The Office may collapse tier levels if there are no applicants that score within that tier level and there is an oversubscription in other tier levels.

R357-16-8. Reporting and Cooperation Requirements.

(1) Grant recipient will cooperate with reasonable requests for site visits during and after completion of the Project.

(2) Grant recipient will provide any additional financial records related to the grant project upon the Office's request.

(3) Grant recipient will provide economic development information and supporting documentation of economic development goals achieved at minimum on an annual basis or upon the Office's request.

(a) Such information shall be provided for up to five years following completion of the Project.

(4) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent.

(5) Grant recipient shall provide the Office with a final written itemized report when the entire grant is spent.

(6) The reports referenced in (4) and (5) shall be provided at least annually, and no later than 60 days after the grant agreement has expired.

(a) Each report shall include:

i. an accounting of project expenditures; and

ii. assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as describe in the recipient's grant application and grant agreement.

R357-16-9. Appeal of Application Denial.

(1) A denial of an applicant's request for a grant may be appealed by written request pursuant to Utah Code Section 63G-4-201, and in accordance with this rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its denial of grant.

(3) Failure to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must mail or email a scanned copy of the form to the address or email address contained on the denial.

(4) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through convincing evidence that it was mailed before the date of receipt.

(5) The Office shall hold informal adjudicative proceedings in accordance with Utah Code Sections 63G-4-202 and 203. The Office shall notify the petitioner and Office representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be for good cause shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The Petitioner named in the notice of agency action and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

(a) Testimony may be taken under oath.

(b) All hearings are open to all parties.

(c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(d) A respondent shall have access to relevant information contained in the Office's files and to material gathered in the investigation of respondent to the extent permitted by law.

(e) The Office may cause an official record of the hearing to be made, at the Office's expense.

(7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Office shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Subsection 63G-4-203(i).

KEY: Outdoor Recreation Infrastructure Grant, outdoor recreation, grants

July 15, 2016 **63N-9-203**

R357. Governor, Economic Development.
R357-17. Air Quality Incentive.
R357-17-1. Authority.

(1) Utah Code Annotated (UCA) Subsection 63N-1-402(2)(b) provides that the Board can make, amend or repeal Rules for the purpose of conducting its business.

R357-17-2. Definitions.

(1) Terms in these rules are used as defined in Utah Code Annotated (UCA) 63N-3-102.

R357-17-3. Application Form and Content.

(1) An application form will be provided by the Office and will contain the following content:

(a) General submission instructions;

(b) Applicant provided project description including:

(i) Emissions profile of the project's operations; and

(ii) Method of intended pollution control measures applicant is submitting for approval from Division of Air quality.

(c) Other criteria and information as requested by the Office in the application;

(d) Any required deadlines and relevant timelines; and

(e) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic format available to the public at business.utah.gov

(3) The application shall also be available in paper format for any person or entity that requests a paper copy via mail or telephone.

R357-17-4. Criteria for Air Quality Grant.

(1) The amount of the grant shall be determined on a case-by-case basis. Factors to be considered include but are not limited to the requirements listed in UCA 63N-1-109.5 and:

(a) Whether the applicant's industry has been determined by the GOED Board as a Targeted Industry as defined in R357-3-2;

(b) The financial cost and need of assistance for the project, including whether the Company has secured the technology at the time of application;

(c) To what extent the best available control technology (BACT) will mitigate projected pollution by applicant;

(d) Comparison to other technologies available for the relevant emissions profile of the applicant;

(e) The economic environment, including the unemployment rate and the underemployment rate of the county where the BACT will be installed, at the time of application;

(f) The location of the project generally and the where the BACT will be installed;

(g) The average wage level of the forecasted jobs created;

(h) The overall benefit to the State and potential improvement to the air quality of the non-attainment area;

(i) The demonstrated support of the local community for the project overall and the BACT; and

(j) Other factors as reasonably determined by the administrator in consultation with the GOED Board.

(2) Applicant must show it does not qualify for any other grant or incentive that would finance or cover the cost of the BACT.

(3) The Department of Environmental Quality (DEQ) will provide a preliminary assessment of the Applicant's proposal and will report on to what extent the proposal meets DEQ and other state and federal legal and regulatory requirements, including whether the equipment to be purchased meets the design requirements corresponding to the BACT for the relevant emissions profile of the applicant

(a) The assessment is subject to change based on conditions outlined in R357-17-6(1); and

(b) Failure to receive a preliminary approval from this assessment will result in the denial of an application.

(4) A grant will only be awarded to applications that demonstrate the grant is only being used to lower the financing costs associated with the BACT.

R357-17-5. Required Documentation and Verification Information.

(1) An applicant may be required to submit the following information and documentation to verify claims and request made in the application:

(a) Balance Sheets;

(b) Income Statements;

(c) Cash Flow Statements;

(d) Bank statements showing purchase;

(e) Invoices and/or receipts showing purchase;

(f) Market analyses;

(g) Analysis showing comparable technology with the BACT;

(h) Workforce data;

(i) Blueprints or other design specifications of BACT purchased;

(j) Business plans of intended use and benefits;

(k) Forecasted new state revenue associated with the BACT;

(l) Forecasted incremental job creation associated with the BACT;

(m) Forecasted wages associated with the BACT; or

(n) Other information as determined by the administrator within its reasonable discretion.

(2) Information provided by the business entity is subject to the Government Records Access and Management Act. The applicant has the option, at its sole discretion and responsibility, to designate what information provided is private or protected subject to UCA 63G-2-302 and/or UCA 63G-2-305.

R357-17-6. Conditions Precedent to Grant Disbursement.

(1) A grant awarded under Section 63N-3-109.5 is conditional and will be contingent on the applicant gaining all required approvals and permits for a New Source Review as promulgated by the Department of Environmental Quality.

(a) Copies of all approval documentation and permits must be provided to the administrator before any disbursement of a grant.

(2) Failure to receive the New Source Review permits from the Department of Environmental Quality will result in rescinding the grant award, and no funding will be awarded.

KEY: air quality, incentives, industrial assistance account
July 22, 2016 63N-1-402(2)(b)

R362. Governor, Energy Development (Office of).
R362-4. High Cost Infrastructure Development Tax Credit Act.
R362-4-1. Purpose.

(1) Pursuant to the High Cost Infrastructure Development Tax Credit Act at Utah Code Section 63M-4-601 et seq. ("the Act"), and in accordance with Utah Code Title 63G, Chapter 3, Utah Administrative Rulemaking Act, this Rule clarifies requirements and establishes procedures for implementation by the Utah Governor's Office of Energy Development ("OED") of the Act.

(2) This Rule clarifies eligibility requirements for high cost infrastructure tax credits; establishes procedures for eligible taxpayers to follow when applying for high cost infrastructure tax credits; clarifies approval, certification and reporting requirements, and provides clarification on how high cost infrastructure tax credits will be calculated.

R362-4-2. Authority.

Pursuant to Utah Code Section 63M-4-6 et seq., OED has authority to establish requirements and procedures for awarding tax credits to qualifying entities.

R362-4-3. Definitions.

(1) Terms in this Rule are defined in Utah Code Section 63M-4-602. The definitions below are in addition to or serve to clarify those found in Utah Code Section 63M-4-602, 63M-4-603, and 63M-4-604.

(a) "Infrastructure" includes an energy delivery project designed to transmit, deliver or otherwise increase the capacity for the delivery of energy to a user.

(b) "Infrastructure-related revenue" means an amount of tax revenue for an entity creating a high cost infrastructure project in a taxable year that is directly attributable to the high cost infrastructure project, under:

(i) Utah Code Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Utah Code Title 59, Chapter 10, Individual Income Tax Act; and,

(aa) Utah Code Title 59, Chapter 10, Individual Income Tax Act revenue shall be calculated by taking 75% of the employer state tax wage withholdings for the qualifying entity claiming a tax credit in the same taxable year for which the tax credit is being claimed.

(iii) Utah Code Title 59, Chapter 12, Sales and Use Tax Act.

(iv) For a fuel standard compliance project, as defined under Utah Code Section 63M-4-602(2), infrastructure-related revenue means state revenues generated by an applicant after the completion of a fuel standard compliance project under: Title 59, Chapter 7, Corporate Franchise and Income Taxes; Title 59, Chapter 10, Individual Income Tax; and Title 59, Chapter 12, Sales and Use Tax Act.

(c) "Office" means the Governor's Office of Energy Development created under Utah Code Section 63M-4-401.

(d) "Board" means the Utah Energy Infrastructure Authority Board created under Utah Code Section 63H-2-202.

(e) "Tax credit" means a certificate issued by the Office and recognized by the Utah State Tax Commission to an infrastructure cost-burdened entity under Utah Code Section 59-7-619 or Utah Code Section 59-10-1034.

R362-4-4. Eligibility for Tax Credit.

(1) Requirements for establishing tax credit eligibility, include:

(a) Meeting the definition of a high cost infrastructure project under Utah Code Section 63M-4-602;

(i) All high cost infrastructure projects, including fuel standard compliance projects, must be physically located in the State of Utah.

(b) Completing an application approved by the Office, including providing sufficient information to determine applicant eligibility;

(c) Office determination that that applicant meets all eligibility requirements and referral to the Board for Board approval;

(d) Receiving a favorable Board recommendation for granting tax credits to the applicant based on the Board's evaluation of the applicant project's benefit to the State of Utah based on factors described in Utah Code Section 63M-4-603(2); and,

(i) The Board may find the applicant's project benefits the State even if the project does not satisfy one or more of the factors described in Utah Code Section 63M-4-603(2).

(e) Entering into an agreement with the Office described in Utah Code Section 63M-4- 603(3) authorizing a post-performance, non-refundable tax credit calculated in accordance with Utah Code 63M-4-603 and Utah Administrative Rules R362-4-5.

R362-4-5. Calculation of Tax Credit.

(1) An eligible applicant that has a qualifying high cost infrastructure project shall be granted a tax credit, on an annual basis, equal to 30% of the applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed.

(a) An eligible applicant may continue to receive tax credits for infrastructure-related revenues on an annual basis, as described above, until it has received tax credits totaling 50% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Utah Code Section 63M-4-603(4) has occurred.

(2) An eligible applicant that has completed a fuel standard compliance project shall be granted a tax credit, on an annual basis, not to exceed 30% of applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed. The exact percentage of the tax credit will be determined by the Board based on criteria described in Utah Code Section 63M-4-603.

(a) An eligible applicant that has completed a fuel standard compliance project may continue to receive tax credits for infrastructure-related revenues on an annual basis, as described above, until it has received tax credits totaling 30% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Utah Code Section 63M-4-603(4) has occurred.

(3) An independent certified public accountant, paid for by the infrastructure cost-burdened entity, shall certify applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed

R362-4-6. Application Process.

(1) The Office is responsible for certifying the high cost infrastructure project and authorizing any tax credit certificate.

(2) Applications for tax credits are to be made on forms developed by the Office to gather information necessary to certify the high cost infrastructure project and authorize tax credits based on the applicant's infrastructure related revenues.

(3) The Office will evaluate each application according to the definitions and criteria established by statute and by this Rule. If the information contained within an application is inadequate to determine eligibility according to this Rule, the Office reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information needed to determine eligibility, the Office

may deny the application until sufficient information is provided.

(4) In order to verify the information submitted in the application and provided to the Board, the applicant may be required to supply additional information at the request of the Office.

(5) All applicants for a tax credit under this Rule shall provide the following information:

(a) The legal name of the person or entity seeking a tax credit.

(b) The tax identification number of the person or entity seeking the tax credit.

(c) The physical address, plat number, or global positioning satellite coordinates of the property where the high cost infrastructure project will be constructed, or such other information necessary to permit the Office staff to locate the site for on-site verification of the information in the application.

(d) A description of the high cost infrastructure project, including timeline. This description is to be accompanied by an itemized summary of all projected and/or actual costs to be incurred during construction of the high cost infrastructure project.

(e) The documentation provided shall be sufficient to allow the Office to identify the cost of the infrastructure construction associated with the high cost infrastructure project, both realized and/or anticipated.

(6) Those applicants seeking a tax credit for the development of a fuel standard compliance project shall also include:

(a) A description of their current operation, including the current fuel standards being met by their existing operation.

(b) A description of the fuel standard compliance project to be undertaken by the company to produce fuel at a Utah refinery that will meet Tier 3 gasoline standards under 40 C.F.R. Section 79.54 and 80.1603.

(7) If, after evaluating an application, the Office determines that it meets all eligibility requirements, then it will be referred to the Board for Board approval.

(a) If, after evaluating an application, the Office determines that applicant is not eligible, the Office shall provide the applicant with a letter including an explanation for the denial.

(8) The Board shall consider the application for approval of tax credits at the next regularly scheduled Board meeting.

(9) An eligible applicant who has received a favorable recommendation from the Board for approval of tax credits shall enter into an agreement described in Utah Code Section 63M-4-603(3) with the Office.

R362-4-7. Tax Credit Approval and Certification.

(1) The Office is responsible for certifying high cost infrastructure tax credits.

(2) After receiving a complete application, including all requested documents supporting an applicant's tax credit eligibility, the Office shall determine whether the applicant has met the eligibility requirements described in Utah Code Section 63M-4-603(1) and in this Rule.

(3) If, after evaluating an application, the Office determines that an applicant is eligible for a tax credit, the Office shall refer the applicant to the Board for Board approval of tax credits based on the Board's evaluation of the project's benefit to Utah based on considerations described in Utah Code Section 63M-4-603(1) and in this Rule.

(a) The Board may find the applicant's project benefits the State even if the project does not satisfy all of the factors described in Utah Code Section 63M-4-603.

(4) If an eligible applicant receives a favorable recommendation from the Board as described in Utah Code Section 63M-4-603(3) and this Rule, the Office will enter into an agreement described in Utah Code Section 63M-4-603(3).

(a) The agreement may include a tax credit authorization based upon the projected cost of the high cost infrastructure project as submitted in the completed application. Nevertheless, the Applicant may only claim a tax credit with a tax credit certificate based on the applicant's actual infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed.

(b) The agreement may contain other terms and conditions necessary to administer the tax credit and satisfy the requirements of the Act, including requiring the Applicant to provide the actual cost to complete the high cost infrastructure project when available to allow the Office to correctly adjust the tax credit authorization.

(c) The agreement may also include conditions under which the agreement and/or the tax credit may be modified or withdrawn, including addressing substantive changes to the Applicant's project not included in the application.

(d) As part of the agreement, applicant must provide the Office annual reports prepared by an independent certified public accountant verifying the high cost infrastructure project's infrastructure-related revenue during the taxable year for which a tax credit is being claimed, as well as granting the Office access to relevant tax records.

(5) Subject to the Act, Rule and agreement, the Office will deliver a tax credit certificate for each qualifying tax year to the applicant or the legal entity the applicant has assigned the tax credit to in accordance with Utah Administrative Rules R362-4-7(6), and provide a copy of the certificate to the Utah State Tax Commission.

(6) Applications for tax credits authorized under this chapter must state the legal entity who will claim the tax credit if other than the Applicant. As part of the tax credit application and approval process, the Office and Board must approve the assignment of the tax credit to the stated recipient.

(a) Any additional assignments and/or transfers of the tax credit are prohibited without the express consent of the Office and Board.

(7) Tax credits authorized by the Office can only be used to offset the applicant's Utah State tax liability under Title 59, Chapter 7, Corporate Franchise and Income Taxes; and, Title 59, Chapter 10, Individual Income Tax.

(8) High Cost Infrastructure tax credits are non refundable and cannot be used in conjunction with any refundable state tax credits.

R362-4-8. Tax Credit Period and Reporting Requirements.

(1) The first reporting period shall begin on the commencement date of the tax credit period, which will be determined by the Office, and shall continue through December 31 of that calendar year. The remaining tax credit and reporting periods shall each span consecutive calendar years from January 1 until December 31. The final tax credit and reporting period will start on January 1 of the calendar year and end on the tax credit termination date as determined when any time period described in Utah Code Section 63M-4-603(4) has occurred.

(2) Within 300 days of the end of each reporting period, the infrastructure cost-burdened entity shall provide the Office an annual report. Reasonable extensions to the 300 day reporting requirement may be granted by the Office.

(a) The report must be prepared by an independent certified public accountant.

(b) The report shall include the amount of infrastructure-related revenue that has been generated during the taxable year for which the tax credit will be claimed, the total amount of tax credit that the infrastructure cost burdened entity has received, and the projected economic life of the high cost infrastructure project.

R362-4-9. Confidentiality.

(1) In accordance with requirements laid out in Utah Code Section 63M-4-604, the Office will treat applicant documents as protected records under Utah Code Section 63G-2-305 and 309. Notwithstanding this policy, applicant will be responsible for providing the Office a business confidentiality form for documents submitted to the Office that it wants protected from public disclosure and clearly marking those documents confidential.

(2) Applicant understands and agrees to provide the Office sufficient information to determine eligibility, and the Board sufficient information to make a recommendation, as well as disclose sufficient information for the Office to meet its statutory reporting requirements.

(3) As part of the duties assigned to the Office in administering the tax credit, the Office is required to report to the Revenue and Taxation Interim Committee of the Utah State Legislature information related to the amount of tax credits granted, and the amount of infrastructure-related revenue generated by the high cost infrastructure projects receiving those tax credits.

(4) In accordance with the Utah Open and Public Meetings Act, Board meetings where voting on the approval of tax credits takes place will be open to the public.

R362-4-10. Appeals Procedure.

(1) A denial of an applicant's request for a tax credit may be appealed by written request pursuant to Utah Code Section 63G-4-201, and in accordance with this Rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its denial of tax credit.

(3) Failure to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must then mail or fax the form to the address or fax number contained on the denial.

(4) The Board considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Board considers the request to be filed on the date that the Board receives it, unless the sender can demonstrate through convincing evidence that it was mailed before the date of receipt.

(5) The Board shall hold informal adjudicative proceedings in accordance with Utah Code Section 63G-4-202 and 203. The Board shall notify the petitioner and Board representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be for good cause shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The Petitioner named in the notice of agency action and the Board shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

(a) Testimony may be taken under oath.

(b) All hearings are open to all parties.

(c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(d) A respondent shall have access to relevant information contained in the Board's files and to material gathered in the investigation of respondent to the extent permitted by law.

(e) The Board may cause an official record of the hearing to be made, at the Board's expense.

(7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Board shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Section 63G-4-203(i).

KEY: incentives
July 14, 2016 **63M-4-601**

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-3. Licensure.
R426-3-100. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a, Chapter 8a. It establishes standards for the licensure of an air ambulance, ground ambulance, and paramedic services.

(2) The purpose of this rule is to set forth air and ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

(3) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-3-200. Requirement for Licensure.

(1) A person who provides or represents that it provides air ambulance, ground ambulance, paramedic ground ambulance, or paramedic services shall first be licensed by the Department.

R426-3-300. Licensure Types.

(1) The Department may issue exclusive ground ambulance transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(2) Current emergency medical technician intermediate advanced (EMT-IA) licenses will remain in effect, no new EMT-IA ground ambulance licenses will be issued.

(3) The Department may issue exclusive ground ambulance inter-facility transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(4) The Department may issue exclusive paramedic, non-transport licenses. (5) The Department may issue a paramedic tactical license that is a designation of function not geographical location.

R426-3-310. Air Ambulance Licensure Types.

(1) The Department may issue an Air Ambulance provider a license in accordance with services accredited by a Department approved accreditation vendor.

R426-3-400. Scope of Operations.

(1) A ground ambulance or paramedic licensed provider may only provide service to its specific licensed geographic service area and is responsible to provide all services to its entire specific geographic service area except as provided by R426-3-900 Aid Agreements. It will provide emergency medical services for its category of licensure that corresponds to the certification levels in R426-5 Emergency Medical Services Training and Certification Standards.

(2) A ground ambulance provider or paramedic service provider shall provide services 24 hours a day, every day of the year.

(3) Air ambulance services shall provide services 24 hours a day, every day of the year as allowed by weather conditions.

(4) A ground ambulance provider or paramedic service provider shall provide all standby services for any special event that requires ground ambulance or paramedic services within its geographic service area. The licensed provider may arrange for those services through R426-3-900 aid agreements. Designated quick response units may also support licensed ground ambulance or paramedic services at special events. If a licensed provider refuses to provide service, or is non-responsive in a timely manner to a request for a special event, the event organizer may use a licensed or designated provider of their choice.

R426-3-500. Minimum Licensure Requirements Air Ambulance, Ground Ambulance, and Paramedic Services.

A licensed provider conforming to R426-3-200 shall meet the following minimum requirements:

(1) sufficient air or ground ambulances, emergency response vehicle(s), equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensed provider;

(2) locations or staging areas for stationing its vehicles;

(3) a current written dispatch agreement with a designated emergency medical dispatch center;

(4) ground ambulances shall have current written aid agreements with other ground ambulance licensed providers to give assistance in times of unusual demand;

(5) a Department certified EMS training officer that is responsible for continuing education;

(6) a current plan of operations.

(7) a description of how the licensed provider or applicant proposes to interface with other EMS agencies.

(8) demonstrate fiscal viability;

(9) medical personnel roster which includes level of certification to ensure there is sufficient trained and certified staff who meet the requirements of R426-4-200 Staffing, and operational procedures.

(10) all permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(a) communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(b) communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

(11) a current written agreement with a Department-certified off-line medical director or a medical director certified in the state where the service is based pursuant to R426-3-700.

(12) provide the Department with a copy of its certificate of insurance or if seeking application, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle or air ambulance in the manner and following minimum amounts:

(a) liability insurance in the amount of $1,000,000 for each individual claim; and

(b) liability insurance in the amount of $1,000,000 for property damage from any one occurrence;

(c) the licensed provider shall obtain the insurance from an insurance company authorized to write liability coverage in Utah or through a self-insurance program and shall:

(i) provide the Department with a copy of its certificate of insurance demonstrating compliance with this section; and

(ii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage within 60 days.

(13) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license; and

(14) A paramedic tactical service shall be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical service's geographic service area.

R426-3-600. Cost, Quality, and Access Goals for Ground Ambulance Providers.

(1) A local government shall establish emergency medical service goals pursuant to Title 26-8a-408(7).

(2) Goals shall be renewed every four years in concurrence with the licensure process for the EMS licensed ground ambulance provider. All local governments in a licensed service area are required to participate.

(3) Goals may be amended, if necessary, due to:

(a) unforeseen changes in service delivery,

(b) community impacts, or

(c) significant unforeseen impact in the geographical service area.

(4) Goals shall be written, approved by local governments, and submitted to the Department with licensure and re-licensure application by the EMS licensed ground ambulance provider for the geographical service area.

(5) Local governments may choose to recognize EMS providers who have achieved accreditation by a Department approved accreditation organization as meeting the cost, quality, and access goals.

(6) Cost goals shall indicate the expected financial cost to the local government(s) and patients for the level of service provided.

(7) Quality goals shall indicate the expected level of service plus any additional foreseen improvements or advancements in service expectations.

(8) Access goals shall indicate the local government's expectation for access to the EMS system by any individual within the local government's geographic area.

R426-3-700. Ground Ambulance or Paramedic Service Application.

(1) An applicant desiring to obtain a new license for ground ambulance, or paramedic services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 along with the following:

(a) a detailed description and detailed map of the exclusive geographical areas that will be served;

(b) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(c) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions for all geographical areas served in accordance with 26-8a-405.2(2);

(d) documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(e) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(f) patient care protocols, medications, and equipment approved by the provider's medical director based on licensure level according to Department policies; and

(g) applicant's plans for operations during times of unusual demand.

(2) An applicant desiring to renew an existing license shall submit documentation that it meets the requirements listed in R426-3-500, along with the following:

(a) a written assessment of field performance from the applicant's off-line medical director; and

(b) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(3) An applicant desiring to obtain a new license or renew an existing license shall submit written cost, quality, and access goals as described in R426-3-600.

(4) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of a special district may respond to a request for proposal if it complies with 26-8a-405(2).

(5) Upon receipt of an appropriately completed application, ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(6) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(7) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(8) After review and before issuing a license to a new service, the Department shall directly inspect the ground vehicle(s), equipment, and required documentation.

(9) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-710. Air Ambulance Application.

An applicant desiring to obtain a new license or to renew its license for air ambulance services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 and the following:

(1) certified articles of incorporation, if incorporated;

(2) a statement summarizing the training and experience of the applicant in the air transportation and care of patients;

(3) a copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations;

(4) a copy of the current certificates of insurance demonstrating coverage for medical malpractice;

(5) a description and location of each dedicated and back-up air ambulance(s) procured for use in the air ambulance service, including the make, model, and year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics;

(6) successful completion of a Department approved accreditation process and such accreditation decision shall exclude Federal Aviation Agency or Aviation Deregulation Act regulated activities;

(7) for new air ambulance services licensed under R426-3-200, the applicant shall submit an application for accreditation by a Department approved accreditation process within one year of receiving a license under this rule; and

(8) licensed air ambulance services shall achieve accreditation and maintain accreditation.

(9) Any new air ambulance providers applying for a license who have been licensed and operating in any other state for at least one year shall provide the Department with a copy of a successful accreditation decision, or an application sent to a Department approved accreditation vendors prior to receiving an air ambulance license.

(10) Upon receipt of an appropriately completed application for air ambulance provider license and submission of license fees, the Department shall collect supporting documentation and review each application.

(11) After review and before issuing a license to a new service, the Department shall directly inspect the air vehicle(s), equipment, and required documentation.

(12) Department approved accreditation vendors shall allow a Department representative to accompany accreditation surveyors on site surveys or during any accreditation inspections

at the request of the Department.

(13) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(14) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(15) Any events impacting patient safety including death, permanent harm, or severe temporary harm, or requiring intervention to sustain life shall be reported to the Department and the associated Department approved accreditation vendor(s) by the licensed air ambulance provider within 30 days or the event.

(16) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-800. Medical Control.

(1) All licensed providers shall enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician shall be familiar with:

(a) the design and operation of the local pre-hospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols;

(b) ensure the qualification of field EMS personnel involved in patient care through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension;

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers; and

(g) licensed providers shall notify the Department if an off-line medical director is replaced, within thirty days.

(3) It is the responsibility of the air ambulance medical director to:

(a) authorize written protocols for the use by air medical attendants and review policies and procedures of the Air ambulance service; and

(b) develop and review treatment protocols, assess field performance, and critique at least 10% of the Air ambulance service runs.

R426-3-900. Ground Ambulance or Paramedic Service Provider Aid Agreements.

(1) All licensed ground ambulance providers shall maintain aid agreement(s) with other ground ambulance provider(s) to call upon them for assistance during times of unusual demand, inter-facility transports, or stand-by events.

(2) Aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;

(b) type of assistance required;

(c) circumstances under which the assistance would be given; and

(d) duration of the agreement.

(3) The parties shall provide a copy of the aid agreement to the Department and to the emergency medical dispatch centers that dispatch the licensed providers.

R426-3-1100. Application Review and Award for Ground Ambulance Providers Selected by Public Bid.

(1) Upon receipt of an appropriately completed application, for ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(2) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;

(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2) or 26-8a-405.1(3), whichever is applicable.

(c) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a-413(1) through 26-8a-313(3); or

(d) issue a second four-year renewal license to a licensed provider selected by a political subdivision if:

(i) the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a(1) through (3); and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(3) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

R426-3-1200. Criteria for Denial or Revocation of Licensure.

(1) The Department may deny an application for a license, a renewal of a license, or revoke, suspend or restrict a license without reviewing whether a license shall be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the

Department;

(j) failure to submit records and other data to the Department as required by R426-7;

(k) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(l) misuse of grant funds received under Section 26-8a-207; or

(m) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant or licensed provider that has been denied, revoked, suspended or issued a restricted license may appeal by filing a written appeal within thirty calendar days of the receipt of the issuance of the Department's denial.

R426-3-1300. Change of Owner.

(1) A license and the vehicle permits cannot be transferred to another party.

(2) As outlined in 26-8a-415, a new owner shall submit within 10 (ten) calendar days prior to acquisition of property, applications and fees for a new license and vehicle permits.

KEY: emergency medical services, licensure
July 15, 2016 26-8a

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-9. Trauma and EMS System Facility Designations.
R426-9-100. Authority and Purpose for Trauma System Standards.

(1) Authority - This rule is established under Title 26, Chapter 8a, 252, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport, and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process established by the Department and applicable statutes.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-9-200. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-9-300. Trauma Center Categorization Guidelines.

The Department adopts as criteria for Level I, Level II, Level III, IV and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2014.

R426-9-400. Trauma Center Review Process.

(1) The Department shall conduct a quality review site visit of trauma centers and applicants to verify compliance with standards set in R426-9-300. In conducting each evaluation, the Department may consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

R426-9-500. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-9-300.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-9-600. Trauma Center Designation Process.

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) a letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) the data specified under R426-9-700 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above.

(e) Level III Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification or consultation visit. Hospitals desiring to be Level III or Level IV Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) The Department and its consultants may conduct observation, review and monitoring activities with any designated trauma center to verify compliance with designation requirements.

(4) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-9-600 or adjusted to coincide with the American College of Surgeons verification timetable.

(5) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-9-700. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and monthly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. Designated trauma centers shall provide such data in a standardized electronic format approved by the Department. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. In order to ensure consistent patient data collection, a trauma patient is defined as a patient sustaining a traumatic injury and meeting the following criteria:

(a) At least one of the following injury diagnostic codes: ICD10 Diagnostic Codes: S00-S00 with 7th character modifiers of A, B, or C only, T07, T14, T20-T28 with 7th character modifier of A, T30-T32, T79.A1-T79.A9 with 7th character modifier of A excluding the following isolated injuries: S00, S10, S20, S30, S40, S50, S60, S70, S80, S90. Late effect codes, which are represented using the same range of injury diagnosis codes but with the 7th digit modifier code of D through S are also exluded; and

(b) At least one of the following patient conditions:

Stay at a hospital greater than 12 hours (as measured from the Emergency Department arrival to patient discharge); transferred in or out of reporting hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status.

(c) The Department adopt by reference the National Trauma Data Standard Data Dictionary for 2016 Admissions published by the American College of Surgeons, and the Utah Trauma Registry State Required Elements for 2016 published by the Department.

R426-9-800. Trauma Triage and Transfer Guidelines.

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

R426-9-900. Noncompliance to Trauma Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-9-300.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-9-1000. Resource Hospital Minimum Designation Requirements.

A Resource Hospital shall meet the following minimum requirements for designation:

(1) Be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah;

(2) Have the ability to communicate with other EMS providers operating in the area;

(3) Provide on-line medical control for all pre-hospital EMS providers who request assistance for patient care, 24 hours-a-day, seven days a week;

(4) Create and abide by written pre-hospital emergency patient care protocols for use in providing on-line medical control for pre-hospital EMS providers;

(5) Train new staff on the protocols before the new staff is permitted to provide on-line medical control and annually review protocols with physician and nursing staff;

(6) Annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control;

(7) Make the protocols immediately available to staff for reference;

(8) Provide on-line medical control which shall include:

(a) direct voice communication with a physician; or

(b) a registered nurse or physician's assistant, who shall to be licensed in Utah, who is in voice contact with a physician;

(9) Implement a quality improvement process which shall include:

(a) representatives from local EMS providers that routinely transport patients to the resource hospital;

(b) quarterly meetings; and

(c) minutes of the quality improvement meetings which are available for Department review;

(10) Identify a coordinator for the pre-hospital quality improvement process;

(11) Cooperate with the pre-hospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular pre-hospital EMS provider;

(12) Participate in local and regional forums for performance improvement; and

(13) Assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format quarterly data specified by the Department.

R426-9-1100. Stroke Treatment and Stroke Receiving Facility Minimum Designation Requirements.

(1) A Primary or Comprehensive Stroke Treatment Center or an Acute Stroke Ready Hospital shall be accredited by the Joint Commission or other nationally recognized accrediting body.

(2) A hospital designated as a Stroke Receiving Facility for receiving stroke patients via Emergency Medical Services shall meet the following requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Require physician response to the emergency department in less than thirty (30) minutes for treatment of stroke patients;

(c) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients;

(d) Maintain and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy;

(e) Establish a standardized acute stroke protocol and authorize appropriate emergency department staff to implement the protocol when appropriate;

(f) Have ancillary equipment and personnel available to diagnose and treat acute stroke patients in a timely manner;

(g) Establish patient transport protocols with designated stroke treatment centers;

(h) Have a performance improvement program for acute stroke care and report data as required by the Department; and

(i) Submit to a site visit by representatives of the Department.

(3) Upon designation, the Department may, in consultation with off line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by an EMS agency.

R426-9-1200. Percutaneous Coronary Intervention Center Minimum Designation Requirements.

(1) A Percutaneous Coronary Intervention (PCI) Center, for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via EMS, shall meet the following minimum designation requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Maintain an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times;

(c) Have the ability to receive 12 lead EKG data from EMS agencies transporting patients to the hospital for treatment of ST Segment Elevation Myocardial Infarction (STEMI);

(d) Maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department twenty four (24) hours a day and seven (7) days a week;

(e) Maintain a performance improvement program for STEMI care and report data to the Department as required by the Department; and

(f) Submit to a site visit by representatives of the Department.

(2) Upon designation, the Department may, in consultation with offline EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by an EMS agency.

(3) The PCI designation and re-designation period shall be for a period of three years.

R426-9-1300. Patient Receiving Facility Minimum Designation Requirements.

(1) A Patient Receiving Facility shall meet the following minimum designation requirements:

(a) Have the ability to communicate with pre-hospital EMS providers;

(b) Be staffed or have on-call physician, physician assistant, or nurse practitioner availability during designated hours with a response time of less than 20 minutes;

(c) Have and maintain ACLS and PALS certification;

(d) Attend meetings of the local EMS council, if one exists, to participate in the coordination and operations of local EMS providers;

(e) Abide by off-line protocols approved by the EMS provider's off-line medical director;

(f) Train staff on protocols used by the EMS providers who transport patients to the Patient Receiving Facility;

(g) Implement a quality improvement process of all patients received at the patient receiving facility with the local resource hospital or trauma center including access to medical records for patients transported by ambulance;

(h) Maintain equipment, services and medications on-site to provide Advanced Life Support (ALS) intervention and appropriate treatment. Equipment and services shall include:

(i) ECG;

(ii) ACLS medications;

(iii) laboratory services;

(iv) radiology services;

(v) oxygen delivery systems;

(vi) airway support equipment and supplies;

(vii) suction equipment and supplies; and,

(i) Submit to a yearly site visit by representatives of the Department; and

(j) Submit monthly data reports to the Department on all patients received by an ambulance, and in an electronic format provided by the Department.

(2) The Department may recommend the preferential transportation of STEMI patients by ambulance to a Patient Receiving Facility.

KEY: emergency medical services, trauma, reporting, trauma center designation

July 15, 2016 26-8a-252

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-5. New Birth Certificates After Legitimation, Court Determination of Paternity, or Adoption.
R436-5-1. Authorization.

This rule is authorized by Section 26-2-10 and describes the procedures for preparing new birth certificates after legitimation, Court determination of paternity or adoption.

R436-5-2. Definition.

For the purpose of this rule "Supplementary certificate of birth" as used in Section 26-2-10 of the Utah statutes means a new birth certificate prepared to replace the original registered birth certificate.

R436-5-3. Legitimation.

(1) The State Registrar shall prepare a new certificate of birth for a child born in this state if the natural parents submit a sworn acknowledgement of paternity, a certified copy of the marriage certificate and pay the required fee. However, if another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction or following adoption.

(2) The acknowledgement of paternity may also specify a name change for the child.

R436-5-4. Court Determination of Paternity.

(1) A person whose parentage has been determined by court order, or his legal representative, may obtain a new birth certificate by presenting a certified copy of the court order to the State Registrar along with the required fee. The Registrar shall prepare the new birth certificate with the full name of the person as specified in the court order. If the court order does not specify the name to be placed on the birth certificate, the State Registrar shall prepare the new birth certificate with the name as listed on the original birth certificate.

(2) If the court order does not specify the name to be placed on the birth certificate and if the original birth certificate does not list the name of the person, the State Registrar shall prepare the new birth certificate without a name. A person whose parentage has been determined by court order and whose new birth certificate does not list his name, or his legal representative, may seek amendment of the new birth certificate pursuant to the provisions of R436-3-2.

R436-5-5. Adoption.

Unless the court order of adoption or report of adoption specifies that a new birth certificate is not to be prepared, the State Registrar shall prepare new birth certificate for a child born in this state upon receipt of a court order of adoption or a court report of adoption certified by the clerk of the court and payment of the required fee. The full name of the child to be entered on the new birth certificate shall be as specified in the court order. A court order of adoption for foreign born persons may also serve as a court order delayed registration of birth as provided in R436-6-1.

R436-5-6. Legal Representative.

For purposes of Section 26-2-10, a legal representative with authority to make application for registration of a new birth certificate is limited to any of the following:

(1) the custodial parent;

(2) a person given authority for purposes of making application for registration of the new birth certificate by a court of competent jurisdiction; and

(3) a person granted power of attorney for purposes of making application for registration of the new birth certificate by:

(a) the person who is the subject of the birth certificate, if of legal age;

(b) the custodial parent, if a sworn attestation of custodianship is included with the power of attorney; or

(c) both parents acting jointly.

R436-5-7. Existing Certificate to Be Placed in a Special File.

Upon preparation of a new certificate under this rule, the State Registrar shall place the original certificate and the evidence upon which the new certificate was based in a sealed file. The sealed file is not be subject to inspection, except upon order of a court of competent jurisdiction or by the State Registrar for the purpose of properly administering the vital statistics program. The State Registrar shall provide a copy of the new birth certificate to the local registrar who has a copy of the original on file. Upon receipt of the new certificate, the local registrar shall replace the copy with the new certificate and return the copy to the State Registrar for destruction or destroy the local copy and so notify the State Registrar. The local registrar shall also delete or destroy index entries referring to the original certificate.

KEY: birth, legitimation, court, adoption
May 1, 1996 **26-2-10**
Notice of Continuation July 13, 2016

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-13. Disclosure of Records.
R436-13-1. Integrity of Vital Records.

To protect the integrity of vital records:

(1) The State Registrar and other custodians of vital records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record, unless the applicant has a direct and tangible interest in such record. In addition to the definition of direct, tangible, and legitimate interest as defined in Section 26-2-22, those who may or may not have a direct and tangible interest are as follows:

(a) The registrant, a member of the immediate family, the guardian, or a designated legal representative shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

(b) The natural parents of adopted children, when neither has custody, shall not be considered to have a direct and tangible interest.

(c) Commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

(2) The State Registrar or the local custodian may provide copies of certificates or disclose data from vital statistics records to federal, state, county, or municipal agencies of government requesting such data in the conduct of their official duties. Certificate copies or individual identifiable information may not be given by the receiving government agency to other agencies or individuals, or used for purposes not authorized at the time of the request.

(3) The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. In emergencies, telephone requests may be accepted with documentation as to the identity of the person making the telephone request. Whenever it is determined necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.

(4) When determining whether a genealogist under Subsection 26-2-22 (3)(b) has demonstrated a direct, legitimate, and tangible interest in a record, the custodian of vital records may consider various relevant factors including the following:

(a) the genealogist shares a common ancestor with the subject of the vital record, the subject is deceased, and the subject has no living immediate family;

(b) the genealogist's stated interest in the vital record;

(c) inability to find information sought in the vital record from other sources; or

(d) the genealogist can provide a written contract for professional genealogical services on behalf of the subject or the subject's immediate family members.

(5) Nothing in this rule shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth and fetal death certificates or the "Information for Statistical Purposes Only" section of the Certificate of Marriage or Certificate of Divorce, Dissolution of Marriage, or Annulment unless specifically authorized by the State Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

R436-13-2. Identity Verification of Individuals Receiving Health Care Services.

In accordance with Subsection 26-1-30 (30), the State Registrar may disclose information contained in vital records to health care providers, public health authorities, and health care insurers, including a qualified network as defined in Section 26-1-37(1), for the purpose of coordinating among themselves to verify the identity of the individuals they serve. This authority includes the provision of computerized matching methods to:

(1) distinguish living from deceased individuals who have received health care services; and

(2) disambiguate individual identities.

KEY: vital statistics, copying processes, standards
July 26, 2016 26-2-22
Notice of Continuation March 21, 2013

R444. Health, Disease Control and Prevention, Laboratory Improvement.
R444-1. Approval of Clinical Laboratories.
R444-1-1. Definitions.

(1) "Department" means the Department of Health.

(2) "Facility" means a place physically equipped to be a laboratory, but not yet approved to operate as a laboratory for a particular specialty or subspecialty.

(3) "Laboratory" means an approved facility that conducts the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.

(4) "Review" means an evaluation of a laboratory or a facility by an authorized department representative to determine compliance with R444-1.

R444-1-2. Authorization.

(1) Pursuant to Section 26-1-30(m), a facility may not operate as a laboratory for a particular specialty or subspecialty within the state unless first approved by the department.

(2) An entity that does not test specimens and only collects or prepares specimens or only serves as a mailing service is exempt from this rule.

R444-1-3. Administration.

(1) The department shall assist any facility or laboratory in the state which desires to become approved or maintain approval. Toward this end, the Division of Epidemiology and Laboratory Services within the department shall arrange for training, reviews, and the provision of reference materials to any facility or laboratory requesting the service.

(2) The department shall approve a facility to operate as a laboratory for particular specialties or subspecialties upon the facility's demonstrating that it has satisfied the requirements for approval, as detailed below:

(a) The facility must hold a valid federal Clinical Laboratory Improvement Act (CLIA) certificate under 42 C.F.R. part 493, 1990 edition, which is incorporated by reference, for the specialty or subspecialty associated with the testing covered by this rule.

(b) A facility must provide the Division of Epidemiology and Laboratory Services (1) the location of the facility; (2) the director of the proposed laboratory and his qualifications; (3) the CLIA certificate number; and (4) the specialties or subspecialties for which the facility has obtained CLIA certification.

(3) A facility that is not approved as a laboratory for the particular specialty or subspecialty that it wishes to perform must request a review in writing providing the information required R444-1-3(2)(b).

R444-1-4. Maintenance of Approval.

(1) A laboratory wishing to maintain approval must:

(a) continue to hold a valid CLIA certificate for the specialty or subspecialty;

(b) notify the Division of Epidemiology and Laboratory Services within 30 calendar days of any changes in information provided pursuant to R444-1-3(2)(b); and

(c) demonstrate successful performance in a proficiency testing program administered or approved by the department.

(2) The department may revoke approval for any specialty or subspecialty for failure to meet the requirements of subsection (1).

R444-1-5. Publishing Lists of Approved Laboratories.

The department shall publish, at least annually, a list of laboratories meeting the minimum standards established under this rule. Included on the list shall be the name and location of the laboratory, the name of the director, and the specialties or subspecialties approved. The department may publish semi-annual amendments to the list in a newsletter.

KEY: medical laboratories
1992 26-1-30(2)(m)
Notice of Continuation July 26, 2016

R444. Health, Disease Control and Prevention, Laboratory Improvement.
R444-14. Rule for the Certification of Environmental Laboratories.
R444-14-1. Introduction.

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

R444-14-2. Definitions.

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

(4) "Department" means the Utah Department of Health.

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

(8) "TNI" means The NELAC Institute.

R444-14-3. Laboratory Certification.

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Volume 1 "Management and Technical Requirements for Laboratories Performing Environmental Analysis" of the TNI Standard adopted September 8, 2009, which are incorporated by reference.

R444-14-4. Analytical Methods.

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through 2010, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40 CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

R444-14-5. Proficiency Testing.

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Volume 1 Module 1 "Proficiency Testing" of the TNI Standard adopted September 8, 2009, which are incorporated by reference.

R444-14-6. Quality System.

(1) A certified laboratory must adhere to the requirements found in Volume 1 Modules 2, 3, 4, 5, 6, 7 "Quality systems" of the TNI Standard adopted September 8, 2009, which are incorporated by reference.

R444-14-7. Recognition of TNI Accreditation.

The department may certify a laboratory that is TNI accredited. A laboratory seeking certification because of its TNI accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of TNI accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte , analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories
October 12, 2011 26-1-30(2)(m)
Notice of Continuation July 26, 2016

R512. Human Services, Child and Family Services.
R512-60. Children's Account.
R512-60-1. Purpose, Authority, Definitions, and Scope.

(1) Purpose. The purpose of this rule is to specify the requirements for carrying out the purposes of the Children's Account, with the funding specified in Section 62A-4a-309.

(2) Authority. This rule is authorized by Section 62A-4a-102.

(3) Definitions. For the purposes of this rule:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Children's Account.

(b) "CA" is the Children's Account.

(c) "Child and Family Services" means the Division of Child and Family Services.

(d) "Conflict of Interest" is defined as a situation where a Council member's private or outside economic, social, political, or volunteer interests interfere (or have the potential to, or may appear to, interfere) with that Council member's duties and responsibilities.

(e) "Council" means the Child Welfare Improvement Council established under Section 62A-4a-311.

(f) "Director" means Director of Child and Family Services.

(g) "State procurement" means the requirements outlined in Section 63G-6a.

(4) Scope. Funds from the CA shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in Section 62A-4a-305.

R512-60-2. Functions of the Council.

(1) The Council shall advise Child and Family Services on matters relating to abuse and neglect and recommend how funds contained in the CA should be allocated.

R512-60-3. Conflict of Interest.

(1) Child and Family Services shall obtain written disclosure of any potential conflicts of interest from a prospective member prior to appointment to Council membership.

(2) Council members shall provide written disclosure of any potential conflicts of interest to Child and Family Services for annual review and approval.

(3) A Council member affiliated with an individual or organization that may bid on or receive a contract shall immediately provide written disclosure of this potential conflict of interest to Child and Family Services.

(4) Child and Family Services may appoint a prospective member who may have a conflict of interest on condition that they may only participate on the Council as it advises Child and Family Services on matters relating to abuse and neglect. A Council member with a conflict of interest shall not receive any information, nor participate in any discussion, presentation, consideration, or vote regarding the Council's recommendations regarding the allocation of CA funds, including any information related to state procurement or contract development or review.

(5) A Council member shall not exert influence or make any requests for favored consideration from any individual on the Council or from Child and Family Services to receive a contract award. Council members participating in the development of fund allocation recommendations or state procurement shall keep confidential any information prior to official public release by Child and Family Services.

R512-60-4. Responsibilities of the Director.

(1) In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:

(a) Designate a staff member to serve as the Administrator of the CA and as the liaison with the Council.

(b) Review policies and procedures regarding the administration of the CA that have been developed by the Council.

(c) Hold a public hearing for comments on the CA allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(d) Approve the allocation plan and prevention priorities prior to implementation.

(e) Approve policies of the CA.

R512-60-5. Proposal Requirements.

(1) A state procurement shall be developed by Child and Family Services based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. The state procurement shall specify the purposes and eligibility requirements for projects or programs to be funded through the CA. The proposal requirements may vary from year to year.

(2) Child and Family Services shall widely disseminate the state procurement. Project or program proposals shall be submitted as specified in the state procurement.

R512-60-6. Funding Limitations and Requirements.

(1) Funding for individual projects shall be recommended by the Council and approved by Child and Family Services based on availability of funds and identified prevention priorities, with consideration for programs or projects that serve the largest portion of the population, serve segments of the population at highest risk for abuse and neglect, or are of exceptional merit as evidence-based or evidence-informed in prevention of abuse or neglect.

(a) Contracts may be renewed according to the terms of the procurement.

(2) Each program or project funded through the CA shall provide a dollar-for-dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50 percent of the local match requirement may be in-kind. The entity that receives the statewide evaluation contract is excepted from the cash-match provisions contained in Section 62A-4a-309. Upon recommendation of the executive director and the Council, Child and Family Services may reduce or waive the match requirements for an entity, if Child and Family Services determines that imposing the requirements would prohibit or limit the provisions of services needed in a particular geographic area (Section 62A-4a-309).

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

R512-60-7. Procedures in Selecting Programs or Projects to be Supported by the Children's Account.

(1) Proposals received by Child and Family Services in response to the state procurement shall be reviewed according to the criteria specified in the state procurement, consistent with Section 62A-4a-307.

(2) The Administrator or other Child and Family Services designees shall negotiate contracts with successful offerors based on State Purchasing Guidelines.

R512-60-8. Evaluation.

(1) Each program or project funded through the CA shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be done by personnel within Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. A copy of the written evaluation shall be provided to Child and Family Services, who will provide evaluation information to the Council.

R512-60-9. Research.

(1) CA funds may be used for research programs consistent with Section 62A-4a-305 at funding levels the Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

KEY: child welfare, child abuse, children's account

July 22, 2016	**62A-4a-102**
Notice of Continuation February 8, 2016	**62A-4a-305**
	62A-4a-309
	62A-4a-310
	62A-4a-311

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-8. Forensic Mental Health Facility.
R525-8-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to explain the criteria for admission to beds for the Forensic Mental Health Facility at the Utah State Hospital.

R525-8-2. Forensic Mental Health Facility.

(1) Pursuant to the requirements of Section 62A-15-902(2)(c), the forensic mental health facility allocates admits individuals in accordance with state statute as follows:

(a) persons found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, or not guilty by reason of insanity under Title 77, Chapter 14;

(b) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a;

(c) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a, who are also intellectually disabled;

(d) prison inmates necessitating treatment in a secure mental health facility in accordance with Section 77-16a-202, 203, 204 and in Section 62A-15-605.5; and

(e) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or his designee.

(2) Additionally, the beds serve the following categories:

(a) persons undergoing an evaluation to determine competency to proceed under Title 77, Chapter 15; and

(b) persons committed to the state hospital as a condition of probation under Subsection 77-18-1(13).

(3) The Executive Director of the Department of Human Services (DHS) or their designee may allocate resources to provide competency restoration services and/or treatment for the purpose of competency restoration to those ordered to the custody of the Department of Human Services.

R525-8-3. Forensic Bed Admissions.

People are identified for admission based on current psychiatric need, legal status and the date of their court order into DHS custody. Highest priority shall be given to those cases which are specifically required to be admitted to the Utah State Hospital by Utah law.

R525-8-4. No Admission Because of Capacity.

When capacity in the forensic mental health facility has been met, the hospital shall not admit any persons to the forensic mental health facility until a bed becomes available. In such an event the hospital will work cooperatively with the court to find a resolution.

KEY: forensic, mental health, facilities
July 7, 2016 **62A-15-105**
Notice of Continuation April 14, 2016 **62A-15-605.5**
62A-15-902(2)(c)
77-16a-202
77-16a-203
77-16a-204
77-18-1(13)

R527. Human Services, Recovery Services.
R527-35. Non-IV-A Fee Schedule.
R527-35-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-11-111. The Office of Recovery Services/Child Support Services (ORS/CSS) is authorized to adopt, amend, and enforce rules by Section 62A-11-107.

2. The purpose of this rule is to provide information regarding the ORS/CSS fee schedule for Non-IV-A cases which is authorized by Federal Regulations found at 45 CFR 302.33. ORS/CSS is responsible for utilizing fees as one method to finance any costs incurred pursuant to Section 62A-11-104. This rule outlines when a fee will be charged and the amount that will be assessed on a case that qualifies for a particular fee.

R527-35-2. Non-IV-A Fee Schedule.

Pursuant to 45 CFR 302.33 (2010) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fees, which have been established by the federal government:

1. the Annual Collection Processing Fee for Child Support Services of $25. This fee is charged to the custodial parent who has never received cash assistance. The fee is retained from child support collected on behalf of the custodial parent after $500.00 has been collected within the one year period, October 1 through September 30 each year.

2. the full IRS enforcement fee of $122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of $20.00. This fee is waived if the case was closed within the last 12 months for the reason CTF (cannot find the non-custodial parent) or AFC (non-custodial parent lives in a foreign jurisdiction);

2. the cost of genetic testing if the alleged father is excluded as the biological father;

3. an administrative fee of 6% of the payment amount each time a payment is processed, not to exceed $12.00 per month;

4. a fee of $25.00, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-IV-A support arrearage if the refund is $50.00 or more. If the refund is more than $25.00 but less than $50.00, the fee is the refund amount minus $25.00;

5. the Child Support Lien Network (CSLN) fee of $52.00, to be paid at the time the levy is processed.

KEY: child support

July 22, 2016	**45 CFR 302.33**
Notice of Continuation November 16, 2015	**62A-11-104**
	62A-11-107
	62A-11-111
	63J-1-504(2)(a)

R539. Human Services, Services for People with Disabilities.
R539-9. State Supported Employment Program.
R539-9-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for the Division's state supported employment program for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.1

R539-9-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101, and

(2) "Supported Employment" means "competitive work" in integrated work settings or employment in "integrated work" settings where individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities.

(3) "Competitive Work" means employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(4) "Integrated Work" means job sites where most employees are not disabled, where a client interacts on a regular basis, in the performance of job duties, with employees who are not disabled. If a client is part of a distinct work group of only individuals with disabilities, the work group should consist of no more than eight individuals.

(5) "Extended Services" means on-going support services and other appropriate services, needed to support and maintain an individual with a most significant disability in employment. They are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment. Extended services are based on a determination of the needs of an eligible individual. Extended services may include natural supports, such as volunteers, family members, co-workers, employer, supervisors, students, and Plan for Achieving Self Support or Impairment Related Work Expense.

R539-9-3. Eligibility.

(1) A Person who meets the eligibility requirements listed in Section 62A-5-103.1 may participate in the state supported employment program provided that:

(2) the Person agrees to enter services under the conditions listed in Section 62A-5-103.1,

(3) the Person agrees not to use any other Home and Community Based Medicaid Waiver service operated by the Division while participating in the Supported Employment Pilot, (but may use Service Brokering services, if appropriate),

(4) if the person has a Medicaid Card the person may continue to access State Plan, E-Pass and other Medicaid services operated separately from the Division during participation in the program,

(5) the person agrees to move off the immediate needs waiting list for supported employment,

(6) the person is found eligible for Division of Rehabilitation Services, Supported Employment funding,

(7) the person agrees to use an approved provider,

(8) the person signs the State Supported Employment Program Participant Agreement and agrees to follow through with instructions from rehabilitation counselors, services for people with disabilities support coordinators and service brokers and private provider staff,

(9) the person has an Office of Education, Rehabilitation Services, Referral and Services Report form 58 completed, signed by a rehabilitation counselor and a Division representative,

(10) the person agrees that the person's need for extended supported employment services will be met solely by the provision of state supported employment program, and

(11) the person agrees to provide information needed by the person's employer to obtain the tax incentive through 26 U.S. Code 44, Federal Welfare to Work, Internal Revenue Service, IRS Form 8850 or Section 59-7-608 or Credit for Employers Who Hire Persons with Disabilities, Form TC-40HD.

R539-9-4. Priority.

(1) First priority will be given to Persons on the waiting list for supported employment services who currently receive Division of Rehabilitation Services funding.

(2) Second priority will be given to Persons on the waiting list for supported employment services and no other services.

(3) Third priority will be given to Persons waiting for supported employment and other services.

KEY: disabilities, supported employment program
December 27, 2011 62A-5-103.1
Notice of Continuation July 26, 2016

R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-1. Authority.

This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A-2-201(3)(a), and, Subsection 63G-4-102(6), Subsection 63G-4-203(1) and other applicable sections of Chapter 4 of Title 63G providing for rules governing adjudicative proceedings.

R590-160-2. Purpose and Scope.

1(a) Purpose: This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the insurance commissioner or the commissioner's designee.

(b) Public hearings under Section 63G-3-302 are not covered by this rule.

(2) Scope: This rule applies to all licensees and non-licensees involved in the business of insurance in Utah.

R590-160-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions as set forth in Section 63G-4-103 and the following:

(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

(2) "Department Representative" means the person who will represent the interests of the Utah Insurance Department, including its attorney, in any administrative action before the commissioner.

(3) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

(4) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

(5) "Petitioner" is a person seeking agency action.

(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.

R590-160-4. Designations of Proceedings.

(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.

(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.

(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63G-4-202(3).

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer.

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenors", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.

(b)(i) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.

(ii) An attorney licensed to practice in another jurisdiction in the United States may apply to appear pro hac vice to represent any party in a particular matter by filing a Motion to Appear Pro Hac Vice. A Motion to Appear Pro Hac Vice shall be served on all parties and shall contain:

(A) the name, address, telephone number, fax number, email address, bar identification number(s), and state(s) of admission of the applicant;

(B) the name and number of the case in which the applicant is seeking to appear as the attorney of record or, if the case has not yet been filed, a description of the parties;

(C) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding;

(D) the name, address, Bar identification number, telephone number, fax number and email address of a member of the Utah State Bar to serve as associate counsel; and

(E) attach a Certificate of Good Standing from the licensing state in which the applicant resides.

(iii) The presiding officer may issue an order allowing the applicant to appear Pro Hac Vice if it appears that the applicant is qualified and allowing the appearance would be in the interest of justice. The order allowing the applicant to appear may be revoked at any time if the attorney fails to comply with any order or direction of the presiding officer or engages in conduct contrary to the Rules of Professional Conduct. The presiding officer may require Utah counsel to appear at all hearings.

(c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts

pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right side, docket number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-5.5. Electronic Filing and Service of Documents in Formal and Informal Proceedings.

(1) Filing with or service on the Commissioner or a presiding officer may be accomplished by sending a copy of the document in .pdf format to uidadmincases@utah.gov.

(2) Filing with or service on the Department may be accomplished by sending a copy of the document in .pdf format to the Department's current email address as set forth in a document filed by the Department in the subject proceeding.

(3) Filing with or service on a licensee may be accomplished by sending a copy of the document in .pdf format to the current email address provided by the licensee to the Department under Utah Code Subsection 31A-23a-412(1).

(4) Filing with or service on a party's representative may be accomplished by sending a copy of the document in .pdf format to the representative's current email address set forth in a document filed by the representative in the subject proceeding.

(5)(a) Documents electronically filed or served shall be signed by a party or its representative and shall contain a signed certificate stating the date of electronic filing or service.

(b) An electronically filed or served document may be signed using any lawfully recognized signature, including an electronic signature, which is any electronic symbol or other digital form adopted by the person with the intent to sign the document.

R590-160-6. Rules Applicable to Formal Proceedings.

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63G-4-206.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is simultaneously provided at no cost to the commissioner. Transcriptions shall be done by a certified shorthand reporter.

(6) Subpoenas and Fees.

(a) Subpoenas. On the motion of the commissioner or the presiding officer, or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery may be had as the parties may agree or pursuant to an order of the presiding officer.

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-7. Rules Applicable to Informal Proceedings.

(1) An informal proceeding may be commenced by the department by issuing a Notice of Informal Proceeding and Order in cases when it appears to the department that no disputed issues exist or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondent unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.

(2) Failure to request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, including a request for a hearing upon the denial of an application for a license or certificate of authority, or a petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, a Notice of Hearing shall be issued stating the matters to be decided and giving notice of the date, time and place of an informal hearing to be held.

(4) An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

(5) At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-8. Agency Review.

(1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section 63G-4-301.

(3) Review shall be conducted by the commissioner or a person or persons designated by the commissioner, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b). The request for agency review shall include a copy of the order, which is the subject of the request.

(b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request; and

(ii) may include supporting arguments and citation to appropriate legal authority; and

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(d) A party challenging a legal conclusion must support its

argument with citation to any relevant authority and also:

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.(5)(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under the circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(5) Request of Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The commissioner may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the commissioner or the commissioner's designee.

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

(ii) If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response in opposition to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.

(d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The commissioner may order or permit oral argument if the commissioner determines such argument is warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

R590-160-9. Sanctions.

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with this rule or any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with this rule or lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with this rule, rulings, or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

R590-160-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule on the effective date of the rule.

R590-160-11. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance

July 28, 2016	**31A-2-201**
Notice of Continuation September 30, 2013	**63G-4-102**
	63G-4-203

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-1. Antidiscrimination.
R606-1-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-1-2. Definitions.

The following definitions are complementary to the statutory definitions specified in Section 34A-5-102, and shall apply to all rules of R606.

A. "Act" means the Utah Antidiscrimination Act, prohibiting discriminatory or unlawful employment practices.

B. "Charging party" means the person who initiated agency action.

C. "Director" means the Director, Division of Antidiscrimination and Labor.

D. "Division" means the Division of Antidiscrimination and Labor.

E. "Disability" is defined in Section 34A-5-102 and is further defined as follows:

1. Being regarded as having a disability is equivalent to being disabled or having a disability.

2. Having a record of an impairment substantially limiting one or more major life activities is equivalent to being disabled or having a disability.

3. Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

4. An individual will be considered substantially limited in the major life activity of employment or working if the individual is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

5. Has a record of such an impairment means has a history of, or has been regarded as having, a mental or physical impairment that substantially limits one or more major life activity.

6. Is regarded as having an impairment means:

a. has a physical or mental impairment that does not substantially limit major life activities but is treated as constituting such a limitation;

b. has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or

c. has none of the impairments listed in the definition of physical or mental impairment above but is treated as having such an impairment.

F. "He, His, Him, or Himself" shall refer to either sex.

G. "Investigator" shall mean the individual designated by the Commission or Director to investigate complaints alleging discriminatory or prohibited employment practices.

H. "Qualified disabled individual" means a disabled individual who with reasonable accommodation can perform the essential functions of the job in question.

I. "Reasonable accommodation": For the purpose of enforcement of these rules and regulations the following criteria will be utilized to determine a reasonable accommodation.

1. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program

2. Reasonable accommodation may include:

a. making facilities used by the employees readily accessible to and useable by disabled individuals; and

b. job restructuring, modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

3. In determining pursuant to Rule R606-1-2.J.1 whether an accommodation would impose an undue hardship on the operation of an employer, factors to be considered include:

a. the overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

b. the type of the employer's operation, including the composition and structure of the employer's work force; and

c. the nature and cost of the accommodation needed.

4. An employer may not deny an employment opportunity to a qualified disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

5. Each complaint will be handled on a case-by-case basis because of the variable nature of disability and potential accommodation.

J. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

R606-1-3. Procedures--Request for Agency Action and Investigation File.

A. CONTENTS OF REQUEST FOR AGENCY ACTION

A request for agency action as specified in Section 34A-5-107, shall be filed at the Division office on a form designated by the Division. The completed form shall include all information required by Section 63G-4-201(3).

B. FILING OF REQUESTS FOR AGENCY ACTION

1. A request for agency action must be filed within 180 days after the alleged discriminatory or prohibited employment practice occurred.

2. A request for agency action shall be filed either by personal delivery or regular mail addressed to the Division's office in Salt Lake City, Utah.

3. Investigators and any other persons designated by the Division, shall be available to assist in the drafting and filing of requests for agency action at the Division's office during normal business hours.

C. RESPONSE/ANSWER TO REQUEST FOR AGENCY ACTION

1. The Division shall mail a copy of the request for agency action to the charging party and the respondent/employer within ten working days of the filing of the request for agency action.

2. The respondent must answer the allegations of discrimination or prohibited employment practice set out in the request for agency action in writing within thirty(30) days from the date of the request for agency action was sent. The response/answer shall be mailed, emailed, or faxed to the Division office. Any correspondence sent by email must be sent to the email address specified by the Division.

3. The response must:

a. Specifically address each allegation raised in the request for agency action, and

b. Be accompanied by any supporting evidence.

4. Failure to respond to a request for agency action will result in an investigation and possible determination without input or evidence from the non-responsive party.

5. Responses submitted beyond the thirty (30) day time limit described in subsection (2) will not be considered, unless an extension has been granted. Extensions are granted at the sole discretion of the Division and should not be expected.

D. INVESTIGATION

Pursuant to Section 34A-5-104(2)(b) and Section 34A-5-

107(3)(b), the Division may, with reasonable notice to the parties, conduct on-site visits, interviews, fact finding conferences, obtain records and other information and take such other action as is reasonably necessary to investigate the request for agency action. A party's unjustified failure to cooperate with the Division's reasonable investigative request may result in the Division concluding its investigation based on such other information as is available to the Division.

E. AMENDMENT OF REQUEST FOR AGENCY ACTION

1. All allegations of discrimination or prohibited employment practice set out in the request for agency action may be amended, either by the Division or the charging party prior to commencement of an evidentiary hearing and the respondent may amend its answer. Amendments made during or after an evidentiary hearing may be made only with the permission of the presiding officer. The Division shall permit liberal amendment of requests for agency action and filing of supplemental requests for agency action in order to accomplish the purpose of the Act.

2. Amendments or a supplemental request for agency action shall be in writing, or on forms furnished by the Division, signed and verified. Copies shall be filed in the same manner as in the case of original requests for agency action.

3. Amendments or a supplemental request for agency action shall be served on the respondent as in the case of an original request for agency action.

4. A request for agency action or a supplemental request for agency action may be withdrawn by the charging party prior to the issuance of a final order.

F. MAILING OF REQUEST FOR AGENCY ACTION

The mailing specified in Section 63G-4-201(3) shall be performed by the Division and the persons known to have a direct interest in the requested agency action as specified in Section 63G-4-201 (3)(b) shall be the charging party and the respondent/employer.

G. CLASSIFICATION OF PROCEEDING FOR PURPOSE OF UTAH ADMINISTRATIVE PROCEDURES ACT

Pursuant to Section 63G-4-202(1), the procedures specified in Section 34A-5-107(1) through (5) are an informal process and are governed by Section 63G-4-203. Any settlement conferences scheduled pursuant to Section 34A-5-107(3) are not adjudicative hearings.

H. PRESIDING OFFICER

For those procedures specified in Section 34A-5-107(1) through (5), the presiding officer shall be the Director or the Director's designee. The presiding officer for the formal hearing referred to in Section 34A-5-(6) through (11) shall be appointed by the Commission.

R606-1-4. Adjudication and Review Pursuant to Section 34A-5-107.

A. After a charge of discrimination has been investigated, the Director shall issue a Determination and Order. Alternatively, the Director may refer the charge to an investigator for further investigation.

B. A party dissatisfied with the Director's Determination and Order may request a de novo evidentiary hearing. The request must be in writing, state the party's reasons for seeking review, and must be received by the Division within 30 days of the date the Director signed the Determination and Order.

1. In computing the foregoing 30-day period, the day on which the Determination and Order are signed by the Director shall not be included. The last day of the 30-day period shall be included unless it is a weekend or legal holiday, in which event the 30-day period runs until the end of the next business day.

2. Unless a timely request for hearing is received by the Division, the Director's Determination and Order is the final Commission Order.

3. If a timely request for hearing is received, the Division will transmit the request to the Division of Adjudication within the Commission for assignment to an Administrative Law Judge. The ALJ will conduct a de novo formal hearing and issue an order in conformity with the requirements of the Utah Administrative Procedures Act.

C. A party may request review of the ALJ's order by complying with the provisions of Section 34A-1-303 and Section 63G-4-301 of the Utah Administrative Procedures Act.

R606-1-5. Release of Information Obtained Through the Investigative Process.

A. Pursuant to Utah Code Subsection 34A-5-107(14), the Division may release information gained through its investigations or proceedings to a party to facilitate their participation in the investigation under the following circumstances:

1. The request is made in writing.

2. The Division has not received a request from the person or entity providing the information that such information be considered confidential.

3. The release of the information will not, in the determination of the Division impede the investigation; and

4. The Division has not determined the requested information should remain confidential or otherwise be protected.

B. If a person or entity requests in writing the information provided to the Commission be kept confidential, the Division will consider the reasons underlying the request and make a decision regarding the confidentiality of the information. This determination will govern the release of such information.

C. After the conclusion of the investigation, either party may request a copy of investigation file.

D. The Division generally will not release the following information:

1. work product;

2. personal contact information of any individual;

3. Social Security information;

4. bank account numbers; and

5. medical records, including the ADA questionnaire, unless an appropriate release of medical information is obtained.

E. The Division may charge for the costs of providing copies to the parties.

R606-1-6. Designation as Formal Proceedings.

The adjudicative proceedings referred to in Subsections 34A-5-107(6)-(10) are classified as formal proceedings for purposes of the Utah Administrative Procedures Act.

R606-1-7. Declaratory Orders.

A. PURPOSE

As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

B. PETITION FORM AND FILING

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

(a) be clearly designated as a request for an agency Declaratory Order;

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

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

(d) describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

(e) include an address and telephone where the petitioner

can be contacted during regular work days;

(f) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(g) be signed by the petitioner.

C. REVIEWABILITY

The agency shall not review a petition for a Declaratory Order that is:

1. not within the jurisdiction and competence of the agency;

2. trivial, irrelevant, or immaterial; or

3. otherwise excluded by state or federal law.

D. PETITION REVIEW AND DISPOSITION

1. The Director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with Legal Counsel; or

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an order pursuant to Section 63G-4-503(6).

E. ADMINISTRATIVE REVIEW

Review of a Declaratory Order is per Section 63G-4-302 only.

R606-1-8. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

KEY: discrimination, employment, time
December 31, 2014 34A-5-101 et seq.
Notice of Continuation July 28, 2016 63G-4-102 et seq.

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.
"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.
"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.
"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.
"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.
"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.
"Park area" means any individual park property in the park system.

R651-601-7. Manager.
"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.
"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.
"Permit" means written authorization by a park representative.

R651-601-10. Posted.
"Posted" means displayed printed instruction or information.

R651-601-11. Person.
"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.
"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:
(1) sales of goods or merchandise.
(2) rentals of equipment.
(3) collection of entrance or admission fees.
(4) collection of storage or use fees.
(5) sales of services.
(6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-13. Commercial Gain.
"Commercial gain" means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.
"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.
"Special Use Permit" means written permission given to an individual, partnership, corporation, or other recognized organization for the purpose of conducting the following: 1) special events whether commercial or non-commercial; 2) certain limited concession activities; and 3) commercial services as guides, provisioners, and/or outfitters.

R651-601-16. Cooperative Agreement.
A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-17. Definitions.
(1) "Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles", "Mopeds", "Motor Assisted scooters", "motorcycles", "motor-driven cycle", and "personal motorized mobility device" as defined in Utah State Code 41-6-1. "Motorized wheelchairs" are also included under this definition.

R651-601-18. Unmanned Aircraft.
(1) "Unmanned Aircraft" means an aircraft that is capable of sustaining flight and that operates with no possible direct human intervention from, on or within the aircraft.

KEY: parks, off-highway vehicles

July 28, 2016	**41-22-10**
Notice of Continuation June 25, 2013	**79-4-203**
	79-4-304
	79-4-601

R651. Natural Resources, Parks and Recreation.
R651-602. Aircraft and Powerless Flight.
R651-602-1. Landing or Taking Off of Manned Aircraft.

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

R651-602-7. Parks Designated Open to Gliders.

The following parks are designated as open to launching and landing powerless paragliders and hang gliders: Flight Park State Recreation Area.

R651-602-8. Operation of Unmanned Aircraft.

A person must obtain written permission from the park manager before operating an unmanned aircraft within the park system.

KEY: parks
July 28, 2016 **79-4-501**
Notice of Continuation June 25, 2013

R651. Natural Resources, Parks and Recreation.
R651-612. Veteran's with Disabilities Honor Pass.
R651-612-1. Authority and Effective Date.

(1) These rules are established as required by 79-4-304 as amended by HB135S01 as passed during the 2016 General Session of the Utah Legislature.

(2) This rule governs the issuance of the 'Veteran's with Disabilities Honor Pass', hereafter referred to as 'Honor Pass' and is effective July 1, 2016.

R651-612-2. Definitions.

(1) 'Qualified Veteran' means an honorably discharged veteran who is:

(a) A resident of the State of Utah; and

(b) Has at least a 50% service related disability as evidenced by documentation from:

(i) The United States Department of Veterans Affairs;

(ii) An active component of the United States armed forces; or

(iii) A reserve component of the United States armed forces.

(2) 'Veterans with Disabilities Honor Pass' or 'Honor Pass' means an annual pass issued in accordance with this rule.

R651-612-3. Honor Pass Application Process.

(1) A qualified veteran meeting the criteria established in R651-612-2 shall be issued an Honor Pass.

(2) The Honor Pass shall be provided free of charge to a qualified veteran.

(3) The Honor Pass is valid only when in the possession of the qualified veteran to whom it was issued, and is nontransferable.

(4) The Honor Pass shall be valid for the entire calendar year for which it was issued.

R651-612-4. Honor Pass Limitations.

(1) Except as specified below, the Honor Pass shall be valid for day use admittance to all state parks for the qualified veteran and up to 7 guests traveling in the same private vehicle.

(2) The Honor Pass is not valid at This Is The Place Heritage Park; and does not cover fees charged by Davis County for travel on the Antelope Island Causeway. The Honor Pass is not valid for special charges or fees within the park (i.e., golf green fees, special program participation fees, camping, etc.).

R651-612-5. Honor Pass Distribution.

(1) Locations of Honor Pass distribution sites will be posted on the Division's website. Electronic application and mail in application options will be pursued.

(2) The Division shall work with veteran service organizations to make passes available at other convenient locations.

KEY: park pass, veterans
July 28, 2016 **79-4-304**

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(s) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or its parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light; or

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target.

(3) Nothing in this Section shall be construed as prohibiting laser range finding devices.

R657-5-8. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-9. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-10. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a variable or fixed power scope, including a magnifying scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit for a big game hunt may:

(i) use only muzzleloader equipment authorized in this Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

(4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in this Section to take the species authorized in the permit.

R657-5-11. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Subsection (5) and Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12;

(d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12; or

(e) a bow with a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit for a big game hunt may :

(i) use only archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during an archery hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only the weapons authorized to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt, provided the person is in compliance with the regulations of that hunt and possesses only the weapons authorized for that hunt;

(iii) livestock owners protecting their livestock;

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife; or

(v) a person possessing a crossbow or draw-lock under a certificate of registration issued pursuant to R657-12.

(5) A person who has obtained an any weapon permit for a big game hunt may use archery equipment authorized in this Section to take the species authorized in the permit, including a crossbow or draw-lock.

(6)(a) A crossbow used to hunt big game must have:

(i) a minimum draw weight of 125 pounds;

(ii) a minimum draw length of 14 inches, measured between the latch (nocking point) and where the bow limbs attach to the stock;

(iii) an overall length of at least 24 inches; measured between the butt stock end and where the bow limbs attach to the stock; and

(iv) a positive mechanical safety mechanism.

(b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:

(i) fixed broadheads that are at least 7/8 inch wide at the widest point; or

(ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position.

(c) It is unlawful for any person to:

(i) hunt big game with a crossbow during a big game archery hunt, except as provided in R657-12-8;

(ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way, except as provided in R657-12-4; or

(iii) hunt any protected wildlife with a crossbow:

(A) bolt that has any chemical, explosive or electronic

device attached; or

(B) that has an attached magnifying aiming device, except as provided in Subsection (7).

(7) A crossbow used to hunt big game during an any weapon hunt may have a fixed or variable magnifying scope.

R657-5-12. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may:

(a) only use archery equipment to take buck deer and bull elk south of I-80 and east of I-15;

(b) only use archery equipment to take big game in Emigration Township; and

(c) not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-13. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to:

(i) take protected wildlife; or

(ii) locate protected wildlife while in possession of a rifle, shotgun, archery equipment, crossbow, or muzzleloader.

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-14. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft, drone, or other airborne vehicle or device from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft, drone, or other airborne vehicle or device in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-15. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

R657-5-16. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or its parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-17. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-18. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as

provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-19. Exporting Big Game From Utah.

(1) A person may export big game or its parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-20. Purchasing or Selling Big Game or Its Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns of legally possessed big game as provided in Subsection 23-20-3, may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-21. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-22. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication of guilt for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution under Section 23-20-4 for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn within any once-in-a-lifetime or limited entry area may receive a permit from the division to hunt the same species on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-23. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in R657-5-11 to take:

(a) one buck deer within the general hunt area specified on

the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.

(5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the guidebook of the Wildlife Board for taking big game.

R657-5-24. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer, as provided in R657-5-27; and

(b) any person 17 years of age or younger on July 31 of the current year, may hunt the general archery, extended archery, general any weapon and general muzzleloader buck deer seasons applicable to the unit specified on the general any weapon buck deer permit, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively.

R657-5-25. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in R657-5-10, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in R657-5-27.

(b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the guidebooks of the Wildlife Board for taking big game.

R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.

(1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.

(ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.

(iii) A landowner association under R657-43 is not eligible to receive limited entry permits that occur on general season units.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management , or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or

limited entry buck permit may not:

(a) obtain any other deer permit, except an antlerless deer permit as provided in R657-5-27 and the guidebooks of the Wildlife Board; or

(b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).

(5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.

(b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking deer;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking deer; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking deer.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for premium limited entry or limited entry units.

(6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) deer cooperative wildlife management units; and

(c) Indian tribal trust lands.

(7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a buck deer during the premium limited entry or limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the multi-season limited entry or limited entry buck deer permit; and

(ii) the Archery Ethics Course Certificate of Completion.

R657-5-27. Antlerless Deer Hunts.

(1)(a) To hunt antlerless deer, a hunter must obtain an antlerless deer permit.

(b) A person may obtain only one antlerless deer permit or a two-doe antlerless deer permit through the division's antlerless big game drawing.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe antlerless deer permit allows a person to take two antlerless deer using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt antlerless deer on any deer cooperative wildlife management unit unless that person obtains an antlerless deer permit for that specific cooperative wildlife management unit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permits, except as provided in R657-44-3.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the applicable permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless deer during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless deer during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, or any weapon;

(ii) General bull elk for archery, muzzleloader, or any weapon;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader, any weapon, or multi-season; or

(vi) Antlerless elk.

(c) A person that possess an unfilled antlerless deer permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless deer as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

R657-5-28. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the guidebooks of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) an antlerless elk or a bull elk on a general any bull elk unit, excluding elk cooperative wildlife management units;

(ii) an antlerless elk or a spike bull elk on a general spike bull elk unit, excluding elk cooperative wildlife management units;

(iii) an antlerless elk or a bull elk on extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion on their person while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3) and by the guidebooks of the Wildlife Board for taking big game.

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the guidebook of the Wildlife Board for taking big game.

R657-5-29. General Season Bull Elk Hunt.

(1) The dates and areas for the general season bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general any weapon bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull elk permit

or an any bull elk permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull elk units are closed to spike bull elk permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk, on a general season any bull elk unit. Spike bull elk units are closed to any bull elk permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull elk or any bull elk, as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-30. General Muzzleloader Bull Elk Hunt.

(1) The dates and areas for general muzzleloader bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general muzzleloader bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader bull elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader, prescribed in R657-5-10, to take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader, as prescribed in R657-5-10, to take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) On selected units identified in the guidebook of the Wildlife Board for taking big game, a person who has obtained a general muzzleloader bull elk permit may use muzzleloader equipment to take either an antlerless elk or a bull elk.

(4) A person who has obtained a general muzzleloader bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-31. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31 of the current year.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A qualified person may obtain a youth any bull elk permit only once during their life.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk or antlerless elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for or obtaining a youth general any bull elk permit.

R657-5-32. Limited Entry Bull Elk Hunts.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry bull elk permit for the area.

(2)(a) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except as provided in Subsection (5) and excluding elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected limited entry bull elk units.

(b) A person that obtains a limited entry bull elk permit with a multi-season opportunity may hunt during any of the following limited entry bull elk seasons established in the guidebooks of the Wildlife Board for the unit specified on the limited entry bull elk permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking elk;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking elk; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking elk.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for limited entry units.

(4) A limited entry bull elk permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) elk cooperative wildlife management units; and

(c) Indian tribal trust lands.

(5) A person who possesses any limited entry archery bull elk permit, including a permit with a multi-season opportunity, may hunt bull elk within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a bull elk during the limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the limited entry bull elk permit; and

(ii) the Archery Ethics Course Certificate of Completion.

(6) "Prescribed legal weapon" means for purposes of this subsection:

(a) archery equipment, as defined in R657-5-11, when hunting the archery season, excluding a crossbow or draw-lock;

(b) muzzleloader equipment, as defined in R657-5-10, when hunting the muzzleloader season; and

(c) any legal weapon, including a muzzleloader and crossbow with a fixed or variable magnifying scope or draw-lock when hunting during the any weapon season.

(7)(a) A person who has obtained a limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(8) A person who has obtained a limited entry bull elk

permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (5) and R657-5-33(3).

R657-5-33. Antlerless Elk Hunts.

(1) To hunt antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless elk on an elk cooperative wildlife management unit unless that person obtains an antlerless elk permit for that specific cooperative wildlife management unit.

(3)(a) A person may obtain three elk permits each year, in combination as follows:

(i) a maximum of one bull elk permit;

(ii) a maximum of one antlerless elk permit issued through the division's antlerless big game drawing; and

(iii) a maximum of two antlerless elk permits acquired over the counter or on-line after the antlerless big game drawing is finalized, including antlerless elk:

(A) control permits, as described in Subsection (5);

(B) depredation permits, as described in R657-44-8;

(C) mitigation permit vouchers, as defined in R657-44-2(2); and

(D) private lands only permits, as described in Subsection (6).(b) Antlerless elk mitigation permits obtained by a landowner or lessee under R657-44-3 do not count towards the annual three elk permit limitation prescribed in this subsection.

(i) "Mitigation permit" has the same meaning as defined in R657-44-2(2).

(c) For the purposes of obtaining multiple elk permits, a hunter's choice elk permit is considered a bull elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the applicable permits listed in Subsection (b), provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless elk during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless elk during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader or any legal weapon;

(ii) General bull elk for archery, muzzleloader or any legal weapon;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any legal weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader or any legal weapon; or

(vi)Antlerless deer or elk.

(c) A person that possess an unfilled antlerless elk permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless elk as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

(5)(a) To obtain an antlerless elk control permit, a person must first obtain a big game buck, bull, or a once-in-a-lifetime permit.

(b) An antlerless elk control permit allows a person to take one antlerless elk using the same weapon type, during the same season dates, and within areas of overlap between the boundary of the buck, bull, or once-in-a-lifetime permit and the boundary of the antlerless elk control permit, as provided in the Antlerless guidebook by the Wildlife Board.

(c) Antlerless elk control permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) A person that possess an unfilled antlerless elk control permit and harvests an animal under the buck, bull, or once-in-a-lifetime permit referenced in Subsection (b), may continue hunting antlerless elk as prescribed in Subsection (b) during the remaining portions of the buck, bull, or once-in-a-lifetime permit season.

(6)(a) A private lands only permit allows a person to take one antlerless elk on private land within a prescribed unit using any weapon during the season dates and area provided in the Big Game guidebook by the Wildlife Board.

(b) No boundary extension or buffer zones on public land will be applied to private lands only permits.

(c) Private lands only permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) "Private lands" means, for purposes of this subsection, any land owned in fee by an individual or legal entity, excluding:

(i) land owned by the state or federal government;

(ii) land owned by a county or municipality;

(iii) land owned by an Indian tribe;

(iv) land enrolled in a Cooperative Wildlife Management Unit under R657-37; and

(v) land where public access for big game hunting has been secured.

R657-5-34. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(4) A buck pronghorn permit allows a person to take one buck pronghorn within the area, during the season, and using the weapon type specified on the permit, except on a pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-35. Doe Pronghorn Hunts.

(1)(a) To hunt doe pronghorn, a hunter must obtain a doe pronghorn permit.

(b) A person may obtain only one doe pronghorn permit or a two-doe pronghorn permit through the division's antlerless big game drawing.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe pronghorn permit allows a person to take

two doe pronghorn using the weapon type, within the area, and during the season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt doe pronghorn on any pronghorn cooperative wildlife management unit unless that person obtains an antlerless pronghorn permit for that specific cooperative wildlife management unit.

(3) A person who has obtained a doe pronghorn permit may not hunt pronghorn during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-36. Antlerless Moose Hunts.

(1) To hunt antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless moose on a moose cooperative wildlife management unit unless that person obtains an antlerless moose permit for that specific cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt moose during any other moose hunt or obtain any other moose permit.

R657-5-37. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, excluding any moose cooperative wildlife management unit located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-38. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-40. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or

hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-41. Depredation Hunter Pool Permits.

(1) When big game are causing damage or are considered a nuisance, control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section, nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

R657-5-42. Carcass Importation.

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer, elk, or moose processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-43. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-44. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48

hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

R657-5-46. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, on the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-28(4).

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23-16-5

23-16-6

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Wilson's Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory games birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-22.

R657-9-5. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-6. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-7. Authorized Weapons.

(1) Migratory game birds may be taken with a shotgun, crossbow or archery tackle, including a draw lock.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking Waterfowl, Wilson's snipe and Coot.

R657-9-8. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs; or

(d) on the Scott M. Matheson or Utah Lake wetland preserve.

R657-9-9. Use of Weapons on State Waterfowl Management Areas.

(1) A person may not discharge a firearm, crossbow, or archery tackle on the Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt

Creek, Stewart's Lake, Timpie Springs and Topaz Waterfowl Management areas during any time of the year, except:

(a) the use of authorized weapons as provided in Utah Admin. Code R657-9-7 during waterfowl hunting seasons for lawful hunting activities;

(b) as otherwise authorized by the Division in special use permit, certificate of registration, administrative rule, proclamation, or order of the Wildlife Board; or

(c) for lawful purposes of self-defense.

R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-11. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units or as posted

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart's Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-12. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-13. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-14. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-15. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-16. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-17. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-18. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-19. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have

ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-21. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-21.

R657-9-24. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-25. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-26. Migratory Bird Preservation Facilities.

(1) Migratory bird preservation facility means:

(i) Any person who, at their residence or place of business and for hire or other consideration; or

(ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-27. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-28. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) Dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

(i) Annabella;
(ii) Bear River Trenton Property Parcel;
(iii) Bicknell Bottoms;
(iv) Blue Lake;
(v) Browns Park;
(vi) Bud Phelps;
(vii) Clear Lake;
(viii) Desert Lake;
(ix) Farmington Bay;
(x) Harold S. Crane;
(xi) Hatt's Ranch
(xii) Howard Slough;
(xiii) Huntington;
(xiv) James Walter Fitzgerald;
(xv) Kevin Conway;
(xvi) Locomotive Springs;
(xvii) Manti Meadows;
(xviii) Mills Meadows;
(xix) Montes Creek;

(xx) Nephi;
(xxi) Ogden Bay;
(xxii) Pahvant;
(xxiv) Public Shooting Grounds;
(xxv) Redmond Marsh;
(xxvi) Richfield;
(xxvii) Roosevelt;
(xxviii) Salt Creek;
(xxix) Scott M. Matheson Wetland Preserve;
(xxx) Steward Lake;
(xxxi) Timpie Springs;
(xxxii) Topaz Slough;
(xxxiii) Vernal; and
(xxxiv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-9-29. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(2) A youth duck hunting day may be allowed for any person 17 years of age or younger on July 31st of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-30. Rest Areas and No Shooting Areas.

(1) A person may only access and use state waterfowl management areas in accordance with state and federal law, state administrative code, and proclamations of the Wildlife Board.

(2)(a) The division may establish portions of state waterfowl management areas as "rest areas" for wildlife that are closed to the public and trespass of any kind is prohibited.

(b) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are designated as rest areas:

(i) That portion of Clear Lake Waterfowl Management Area known as Spring Lake;

(ii) That portion of Desert Lake Waterfowl Management Area known as Desert Lake;

(iii) That portion of Public Shooting Grounds Waterfowl Management Area that lies above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake";

(iv) That portion of Salt Creek Waterfowl Management Area known as "Rest Lake"; and

(v) That portion of Farmington Bay Waterfowl Management Area that lies in the northwest quarter of unit one.

(d) Maps of all rest areas will be available at division offices, on the division's website, and to the extent necessary, marked with signage at each rest area.

(3)(a) The division may establish portions of state waterfowl management areas as "No Shooting Areas" where the discharge of weapons for the purposes of hunting is prohibited.

(b) No Shooting Areas remain open to the public for other lawful activities.

(c) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are No Shooting Areas:

(i) Within 600 feet of the north and south side of the center line of Antelope Island causeway;

(ii) Within 600 feet of all structures found at Brown's Park Waterfowl Management Area;

(iii) The following portions of Farmington Bay Waterfowl Management Area:

(A) within 600 feet of the Headquarters and Learning Center area; and

(B) within 600 feet of dikes and roads accessible by motorized vehicles;

(iv) Within 600 feet of the headquarters area of Ogden Bay Waterfowl Management Area;

(v) Within the boundaries of all State Parks except those designated open by appropriate signage as provided in Rule R651-614-4;

(vi) Within 1/3 of a mile of the Great Salt Lake Marina;

(xi) Below the high water mark of Gunnison Bend Reservoir and its inflow upstream to the Southerland Bridge, Millard County;

(xii) All property within the boundary of the Salt Lake International Airport; and

(xii) All property within the boundaries of federal migratory bird refuges, unless hunting waterfowl specifically authorized by the federal government.

(4) The division reserves the right to manage division lands and regulate their use consistent with Utah Code Section 23-21-7 and Utah Administrative Code R657-28.

R657-9-31. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Wilson's snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-32. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-33. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot, or register online at the address published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;
(b) hunting license type;
(c) name;
(d) address;
(e) phone number;
(f) birth date; and
(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit, and Doug Miller Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

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R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(d) "Cougar control permit" means a harvest objective permit that authorizes a person to take a second cougar on harvest objective units that have an unlimited quota.

(e) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(f) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(g) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(h) "Green pelt" means the untanned hide or skin of any cougar.

(i) "Harvest objective hunt" means any hunt that is identified as harvest objective in the hunt table of the guidebook for taking cougar.

(j) "Harvest objective permit" means any permit valid on harvest objective units, including limited-entry permits for split units after the split-unit transition date.

(k) "Immediate family member" means a livestock owner's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild and grandchild.

(l) "Kitten" means a cougar less than one year of age.

(m) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

(n) "Limited entry hunt" means any hunt listed in the hunt tables of the guidebook of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(o) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(p) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(q) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(r) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(s) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(t) "Unlimited quota unit" means a harvest objective unit that does not have a limit on the number of cougar that may be harvested during the open season.

(u) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

(v) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit, harvest -objective cougar permit, or cougar control permit, for the specified management units as provided in the guidebook of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit, harvest objective cougar permit, or cougar control permit, may pursue cougar on the unit for which the permit is valid.

(2) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3);

(b) as provided in Subsection R657-10-33; or

(c) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective or cougar control permit.

(3) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase.

(4) To obtain a cougar limited entry permit, harvest objective permit, cougar control permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-4. Permits for Pursuing Cougar.

(1)(a) To pursue cougar without a limited entry, harvest objective, or cougar control permit, the dog handler must:

(i) obtain a valid cougar pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(b) A cougar pursuit permit or exemption there from does not allow a person to kill a cougar.

(2) Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of

Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns, crossbows and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougar wearing electronic radio devices.

R657-10-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A dog handler may pursue cougar provided he or she possesses:

(a) a valid cougar permit issued to the dog handler;

(b) a valid cougar pursuit permit; or

(c) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a cougar and there is not an open pursuit season, the dog handler must have:

(a) a valid cougar permit issued to the dog handler for the unit being hunted;

(b)(i) a valid cougar pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a cougar permit for the area; or

(c)(i) the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a valid cougar permit for the area.

(5) A dog handler may pursue cougar under:

(a) a cougar pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a valid cougar permit only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking cougar; or

(b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.

(4)(a) The Division may issue depredation permits to take cougar on specified private lands and public land grazing allotments with a chronic depredation situation where numerous livestock have been killed by cougar.

(b) The Division may:

(i) issue one or more depredation permits to the affected livestock owner or a designee, provided the livestock owner does not receive monetary consideration from the designee for the opportunity to use the depredation permit;

(ii) determine the legal weapons and methods of take allowed; and

(iii) specify the area and season that the permit is valid.

(5)(a) Any cougar taken under Subsection (1)(a) or (4)(a) shall remain the property of the state and must be delivered to a division office or employee within 72 hours.

(b) The division may issue a cougar damage permit to a person who has killed a depredating cougar under Subsection (1)(a) that authorizes the person to keep the carcass.

(c) A person that takes a cougar under Subsection (1)(a) or (4)(a) may acquire and use a limited entry permit or harvest objective cougar permit in the same year.

(d) Notwithstanding Subsections (5)(b) and (5)(c), a person may retain no more than one cougar annually.

(6)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Survey.

Each permittee who is contacted for a survey about their cougar hunting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-10-23. Taking Cougar.

(1)(a) For each permit issued, a person may only take one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking cougar.

(c) Harvest -objective permits may be purchased on a first-come, first-served basis as provided in guidebook of the Wildlife Board for taking cougar.

(d) Cougar control permits may be purchased as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the guidebook of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a valid cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas, unlimited quota units, and limited entry permit areas are published in the guidebook of the Wildlife Board for taking cougar.

(7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the guidebook of the Wildlife Board for taking cougar.

(b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-29.

R657-10-24. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

R657-10-25. Cougar Pursuit.

(1)(a) Except as provided in rule R657-10-3(1)(b) and Subsection (2), cougar may be pursued only by persons who have obtained a cougar pursuit permit.

(b) The cougar pursuit permit does not allow a person to:

(i) kill a cougar; or

(ii) pursue cougar for compensation.

(c) A person may pursue cougar for compensation only as provided in Subsection (2).

(d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue cougar;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue cougar on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue cougar on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue cougar under Subsection (2).

(4)(a) A person pursuing cougar for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of cougar.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.

(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(7) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit, harvest objective cougar permit, or cougar control permit.

(8) Cougar may be pursued only on limited entry units, harvest objective units, or unlimited quota units during the dates provided in the guidebook of the Wildlife Board for taking cougar.

(9) A cougar pursuit permit is valid on a calendar year basis.

(10) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

R657-10-26. Limited Entry Cougar Permit Application Information.

(1) Limited entry cougar permits are issued pursuant to R657-62-24.

R657-10-27. Harvest Objective General Information.

(1) Harvest objective permits are valid only for open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that unit.

R657-10-28. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase unless specifically authorized by the division.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-10-29. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the harvest objective unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the quota for that harvest objective unit is met and the division closes the unit; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-30. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit or a cougar control permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required

in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-10-31. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

R657-10-32. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening and filing of charges for the poaching incident.

(2) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a cougar on a limited entry cougar unit, under Section 23-20-4, may receive a permit from the division to hunt cougar on the same limited-entry cougar unit where the reported violation occurred, as provided in Subsection (3).

(3)(a) The division may issue poaching-reported reward permits only in limited-entry cougar units that have more than 10 total permits allocated.

(b) The division may issue only one poaching-reported reward permit per limited-entry cougar unit per year.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one cougar poaching-reported reward permit shall be issued to any one person in any one cougar season.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess a Utah hunting or combination license and otherwise be eligible to hunt and obtain cougar permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-10-33. Cougar Control Permits.

(1)(a) The division, with approval of the Wildlife Board, may identify a harvest objective unit as an unlimited quota unit.

(b) An individual may acquire a cougar control permit to hunt on an unlimited quota unit if they first obtain:

(i) a harvest objective permit; or

(ii) a limited entry permit for a split unit and the split unit has transitioned to harvest objective status.

(c) An individual may retain a cougar lawfully harvested under a cougar control permit regardless of whether they lawfully harvested and retained a cougar under a permit listed in Subsections (1)(b)(i) or (ii).

(2) An individual may only acquire one cougar control permit each season.

(3) Cougar control permits are only valid within the boundaries of unlimited quota units and during the dates described on the permit and in the guidebook of the Wildlife Board for taking cougar.

KEY: wildlife, cougar, game laws
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Notice of Continuation August 1, 2016 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-23. Utah Hunter Education Program.
R657-23-1. Purpose and Authority.

Under authority of Section 23-19-11, this rule provides the process and requirements for:

(1) hunter education instructor and student training; and

(2) presenting and obtaining proof of having successfully completed an approved hunter education course.

R657-23-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Approved hunter education course" means any hunter education course that qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.

(b) "Authorized division representative" means a volunteer hunter education instructor who has been approved by the division to issue duplicate blue cards.

(c) "Blue Card" means the certificate of completion issued by the division for having passed a Utah hunter education course or an approved hunter education course.

(d) "Certificate of completion" means a card, certificate, or other document issued by the wildlife agency of a state, province, or country, and signed by a hunter education instructor, verifying successful completion of an approved hunter education course.

(e) "Hunter Education Registration Certificate" means a document purchased from the division that is valid for 365 days from date of purchase which is required to sign up for and graduate from the hunter education course. This document becomes a valid hunting license upon validation of course completion by a certified hunter education instructor.

(f) "Field day" means an instructor-lead practical exercise which may include instruction in and student demonstration in the safe use of firearms, hunter responsibility, a written exam, and a live fire exercise with a certified hunter education instructor as prescribed by the Utah Hunter Education Program administration.

(g) "Trainer" means a volunteer hunter education instructor or Division employee who has been certified by the division to train hunter education instructors.

(h) "Instructor" means a volunteer hunter education instructor or division employee who has been approved by the division to teach the hunter education program to students.

(i) "Online hunter education course" means a Division-approved hunter education course that is completed online prior to attending a field day.

(j) "Student" means a person who is registered in a hunter education course being taught by a certified hunter education instructor.

(k) "Instructor-lead hunter education course" means a hunter education course that meets the International Hunter Education Association -- USA minimum standards for hunter education and that is lead by an instructor and includes, a written exam and a live fire exercise.

R657-23-3. Hunter Education Required.

(1)(a) To obtain a hunting license, any person born after December 31, 1965, must present proof of having passed a division approved hunter education course.

(b) A person may take a hunter education course offered by the division as provided in Subsection (2), or (3).

(2) Completion of a instructor-lead hunter education course requires students to:

(a) purchase a hunter education registration certificate from a Division authorized licensed vendor;

(b) attend the instructor-lead course;

(c) behave in a safe and responsible manner in class;

(d) obtain a passing score of at least 75% on a written exam; and

(e) participate in a live fire exercise demonstrating safe firearms handling.

(3) Completion of the online hunter education course requires students to:

(a) purchase a hunter education registration certificate from a Division authorized licensed vendor.

(b) pre-register for the field day by contacting the instructor by mail, e-mail or telephone;

(c) successfully complete a division-approved online course and provide documentation of completion to the hunter education instructor prior to participating in a field day;

(d) behave in a safe and responsible manner while attending the field day;

(e) obtain a passing score of at least 75% on a written exam; and

(f) participate in a live fire exercise demonstrating safe firearms handling.

(4)(a) The division will issue a Blue Card to each individual who successfully completes the hunter education course.

(5) A member of the United States Armed Forces on active duty, reserve duty, or having veteran status, or a member of the Utah National Guard is exempt from the live fire exercise required in Subsections 2 and 3 above if they can provide their active or reserve status Military identification card or valid documentation of veteran status to the hunter education instructor prior to the live fire exercise.

(6) The division shall accept other states, provinces, and countries criteria and qualifications for their respective courses, which meet or exceed the International Hunter Education Association-USA hunter education standards.

R657-23-4. Documents Accepted as Proof of Completion of a Hunter Education Course.

(1) The division and division approved license agents shall accept proof of completion of an approved hunter education course from other states, provinces, and countries whole criteria and qualifications for their respective courses, meet or exceed the International Hunter Education Association-USA hunter education standards in accordance with Section 23-19-11.

(2)(a) Any person who has completed an approved hunter education course in another state, province, or country and becomes a Utah resident must obtain a transfer Blue Card prior to purchasing a resident hunting license.

(b) The person must present proof of completion of an approved hunter education course to a division office as required under Subsection (1).

(3)(a) If an applicant for a nonresident hunting license is not able to present a hunting license with the hunter education number noted on it or a certificate of completion as provided in Subsection (1), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license may be issued.

(4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license with the hunter education number noted on it, the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.

(b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.

(5)(a) If a Blue Card is lost or destroyed, a person may apply by mail or in person at a division office to obtain a duplicate Blue Card. The person must complete an affidavit and request a record's search.

(b) Upon verification of completion of the hunter

education course, the division may issue the person a duplicate Blue Card.

(6) The division requires any person whose records cannot be found or who cannot be verified as having completed a hunter education course to take the complete course as required under Section R657-23-3.

(7) For the purpose of issuing a hunting license, the division may, upon request, provide verification to another state's wildlife agency that a resident or former resident of Utah has met the Utah hunter education requirements.

(8) The division may charge a fee for the services provided in Subsections (2), (3), (4), and (5).

R657-23-5. Hunter Education Instructor Training.

(1) A person must be 21 years of age or older to become a certified hunter education instructor.

(2) Completion of a hunter education instructor course requires a person to:

(a) Complete the Division's instructor training course.

(b) Pass a criminal background check assessing suitability to work with children under the age of 18 years and to serve as an instructor;

(c) Attend a training course conducted by a trainer;

(d) Obtain a passing score of at least 75% on a written exam; and

(e) Participate in a live fire exercise or a range safety training course.

(3) The division shall issue a hunter education instructor card to each individual who successfully completes the hunter education instructor course.

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R657. Natural Resources, Wildlife Resources.
R657-26. Adjudicative Proceedings for a License, Permit, or Certificate of Registration.
R657-26-1. Purpose and Authority.

Under authority of Subsection 23-19-9(14), this rule provides the procedures and standards for:

(1) the suspension of the privilege of applying for, purchasing and exercising the benefits conferred by a license or permit; and

(2) the suspension of a certificate of registration.

R657-26-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Intentionally" as defined in Section 76-2-103.

(b) "Knowingly" as defined in Section 76-2-103.

(c) "Party" means the division, Wildlife Board, or respondent.

(d) "Presiding officer" means the hearing officer appointed by the division director to conduct suspension proceedings.

(e) "Recklessly" as defined in Section 76-2-103.

(f) "Respondent" means a person against whom a suspension proceeding is initiated.

(g) "Single Criminal episode" means all conduct, which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective as defined in 76-1-401.

R657-26-3. Commencement of Suspension Proceedings.

(1)(a) Each adjudicative proceeding shall be commenced by the presiding officer filing a notice of agency action.

(2) The notice of agency action shall be filed and served according to the requirements provided in Section 63G-4-201(2).

(3) All suspension proceedings conducted by the presiding officer are designated as informal adjudications. The presiding officer may convert the hearing to a formal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

R657-26-4. Procedures for Suspension Proceedings.

(1)(a) An answer or other pleading responsive to the allegations in the notice of agency action does not need to be filed by the respondent.

(b) If an answer to the notice of agency action is filed, the answer shall include:

(i) the name of the respondent;

(ii) the case number or other reference number;

(iii) the facts surrounding the allegations;

(iv) a response to the allegations that the violation was committed knowingly, intentionally or recklessly; and

(v) the date the answer was mailed.

(2) The respondent may access any relevant information contained in the division's files and all materials and information gathered in the investigation of the respondent, to the extent permitted by law.

(3) Discovery and intervention is prohibited.

R657-26-5. Hearings.

(1)(a) The presiding officer shall provide the respondent with an opportunity for a hearing.

(b) A hearing shall be held if the division receives a written request for a hearing from the respondent within 20 calendar days after the date the notice of agency action is issued.

(2) The respondent, or a person designated by the respondent to appear on the respondent's behalf, may testify at the hearing and present any relevant information or evidence.

(3) Hearings shall be open to the public.

(4) After reviewing all the information provided by the parties, the presiding officer may suspend the respondent's license, permit or certificate of registration privileges in accordance with Section 23-19-9.

(5)(a) The type of license, permit or certificate of registration privilege suspension imposed shall be within the following categories:

(i) all fishing licenses and permits;

(ii) all furbearer and bobcat licenses and permits;

(iii) all hunting licenses and permits for big game;

(iv) all hunting licenses and permits for small game and wild turkey permits. Any person suspended for small game will be eligible to purchase an alternate hunting license to apply for and obtain big game, cougar, and bear permits but will not be issued a hunting license valid to take small game;

(v) all permits to take and pursue cougar and bear;

(vi) all falconry permits and falconry certificates of registration;

(vii) certificates of registration of a type specified; or

(viii) all hunting licenses, permits and certificates of registration;

(ix) all licenses, permits and certificates of registration issued by the division.

(b) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity for which the person was participating in when the violation occurred.

(c) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity that involved the unlawful taking of protected wildlife for which no season has been established.

(d) If the violation involves acts that occurred while participating in an activity regulated by Title 23, which include more than one of the types of license or permit privileges as provided in Subsection (a), the presiding officer may suspend the license, permit or certificate of registration privileges for all categories that apply.

(e) The presiding officer may impose a suspension of all privileges to hunt protected wildlife or all privileges to take protected wildlife if the violations are found by the presiding officer to be conspicuously bad or offensive. This may include, but are not restricted to, the violations described in Subsection (e)(i) through Subsection (e)(viii).

(i) Any violation which could result in suspension that involves taking, in a single criminal episode, four times the legal bag limit of any protected fish species.

(ii) Any violation which could result in suspension that involves taking, in a single criminal episode, three times the legal bag limit of any small game species or waterfowl.

(iii) Any violation which could result in suspension that involves a once-in-a-lifetime species.

(iv) Any violation which could result in suspension that occurs out of season or in a closed area for the species illegally taken and involves a trophy animal.

(v) Three or more felony or class A misdemeanor violations under Section 23-20-4 in a seven-year period, regardless of suspension periods previously imposed.

(vi) Any violation which could result in suspension that involves the unlawful taking, in a single criminal episode, of two or more big game animals.

(vii) Any violation which could result in suspension that involves the unlawful taking, in a single criminal episode, of two or more cougar or bear.

(viii) Any violation subject to Section 23-19-9 that further violates an existing order of revocation or suspension recognized by the Utah Division of Wildlife Resources.

(ix) Any violation which involves the unlawful taking of

big game for pecuniary gain.

(6) The director shall appoint a qualified person as a presiding officer in accordance with Section 23-19-9(9).

(7) The presiding officer may suspend privileges to take protected wildlife up to but not to exceed the limits as defined in Utah Code Sections 23-19-9-(4) and (5). The presiding officer will take into account any aggravating or mitigating circumstances when deciding the length of a suspension period.

(8) The presiding officer may suspend privileges based on two or more separate criminal episodes either concurrently or consecutively.

(9) The presiding officer may suspend privileges previously suspended by a court, presiding officer or the Wildlife Board either concurrently or consecutively.

(10) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration in accordance with Section 23-19-9(10).

(11) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

R657-26-6. Issuance of Decision and Order.

(1) Within a reasonable time after the close of the adjudicative proceeding, the presiding officer shall issue a signed, written order that states:

(a) the decision;

(b) the reasons for the decision;

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

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

(2) The decision and order shall be based on facts appearing in division files and on the testimony and facts presented in evidence at the hearing.

(3)(a) A copy of the decision and order shall be promptly mailed to all parties.

(b) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

R657-26-7. Default.

(1) The presiding officer may enter an order of default against the respondent if the respondent fails to participate, either in writing or in person, in the adjudicative proceeding.

(2) Upon considering the order of default, the presiding officer shall review the investigative file to determine the elements for suspension are satisfied and shall issue and order of default that:

(a) include a statement of the grounds for default;

(b) makes a finding of all relevant issues required in Utah Code Section 23-19-9; and

(c) mail a copy of the order to all parties.

(i) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

(3)(a) A defaulted party may seek to have the presiding officer set aside the default order, and any order in the adjudicative proceeding issued subsequent to such default, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default order and any subsequent order shall be made in writing to the presiding officer.

(c) A defaulted party may seek Wildlife Board Review under Section R657-26-8 only on the decision of the presiding officer on the motion to set aside the default.

R657-26-8. Wildlife Board Review - Procedure.

(1)(a) A person may file an appeal of a presiding officer's decision with the Wildlife Board.

(b) The appeal must be in writing and the respondent shall send a copy of the appeal by mail to the chair of the Wildlife Board and each of the parties.

(2) The appeal must be received within 30 calendar days after the issuance of the presiding officer's decision and order.

(3) The appeal shall:

(a) be signed by the respondent or the respondent's legal counsel;

(b) state the grounds for appeal and the relief requested; and

(c) state the date upon which it was mailed.

(4)(a) Within 30 calendar days after the mailing date of the appeal, any party may file a written response with the Wildlife Board.

(b) A copy of the response shall be sent by mail to the chair of the Wildlife Board and each of the parties.

(5) The Wildlife Board may hold a de novo formal hearing in accordance with the provisions of Section 63G-4-204 through Section 63G-4-208. The Wildlife Board may convert the hearing to an informal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(6) At the conclusion of the hearing, the Wildlife Board may:

(a) affirm the decision;

(b) vacate or remand the decision;

(c) amend the type of suspension ordered by the presiding officer; or

(d) amend the suspension period not to exceed the statutory maximums.

(7) The Wildlife Board chair may vote in an adjudicative proceedings decision, and any Wildlife Board decision shall be supported by a majority of the voting members present.

(8)(a) Within a reasonable time after the close of the formal hearing, the chair of the Wildlife Board shall issue a written order that affirms, vacates or remands the decision or amends the type of suspension ordered by the hearing officer.

(b) The order on review shall be signed by the chair of the Wildlife Board and mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute permitting review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) whether the decision of the presiding officer is to be affirmed, reversed, modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vi) a notice of any right of further administrative reconsideration; and

(vii) the time limits applicable to any review.

R657-26-9. Reinstatement of a License, Permit, or Certificate of Registration.

(1) A presiding officer may reinstate a person's license, permit, or certificate of registration suspended under Section 23-19-9.5 upon receiving a written request for reinstatement.

(2) The person making the request shall include:

(a) the person's name, phone number, and mailing address;

(b) the number of the license, permit, or certificate of registration that was suspended or revoked;

(c) the date the violation occurred;
(d) the date the request was mailed;
(e) the state in which the violation occurred;
(f) a copy of a receipt from the court where the violation was processed stating the violation is no longer outstanding; and
(g) the person's signature.

(3) Within a reasonable time of receiving the request, the presiding officer shall issue a written order stating whether the request is granted or denied and the reasons for the decision.

(4) If a presiding officer denies a person's request for reinstatement, the person may submit a request for reconsideration by following the procedures provided in Section 63G-4-302.

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23-14-19
23-19-9
23-20-14
63G-4-302
63G-4-203

R671. Pardons (Board of), Administration.
R671-315. Pardons.
R671-315-1. Pardons.

1. A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.

2.(a) The Board may consider an application for a pardon from any individual who has been convicted of an offense in the state of Utah, after the applicant has exhausted all judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction.

(b) The Board will accept and consider a pardon application only after at least five years has passed since the sentence for the conviction and any enhancement period has terminated or expired.

(c) The Board will not consider pardons for infractions.

3.(a) A person seeking a pardon from the Board must complete and file, to the Board's satisfaction, an application in a form approved by the Board.

(b) No pardon application will be accepted unless it has been signed by the person whose convictions are sought to be pardoned.

(c) Posthumous pardon applications will not be accepted or considered.

(d) A pardon application will not be considered unless the applicant is able and willing to personally attend the pardon hearing.

4. In addition to the completed application, Board staff shall obtain and provide relevant information including, but not be limited to:

(a) all police reports concerning the conviction for which the applicant is seeking a pardon;

(b) all pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction for which the applicant is seeking a pardon;

(c) the applicant's inmate files;

(d) a recent BCI report, NCIC report, and III report concerning the applicant;

(e) verification from the applicant that all imposed restitution, fines, fees, or surcharges have been paid in full; and

(f) verification from the applicant that the applicant completed therapy programs ordered by any court or by the Board.

5.(a) Board staff shall summarize all information collected or submitted regarding the application and provide the application and additional information to the Board.

(b) Board staff shall disclose to the applicant, prior to the hearing, all information obtained or received by the Board regarding the pardon application which is not from the applicant.

(c) The Board may request additional information from staff or from the applicant.

6. Once complete, and if otherwise compliant with all Board rules, the pardon application and all available relevant information will be considered by the Board, which shall vote to grant or deny a pardon hearing.

7. If a pardon hearing is granted:

(a) notice of the hearing shall be published on (i) the Board's web site; and (ii) the Utah Public Notice web site; and

(b) for each conviction which is the subject of the pardon hearing, notice of the hearing shall be mailed or otherwise sent to:

(i) any victim of record, if the victim can be located;

(ii) the arresting or investigative agency;

(iii) the sentencing court; and

(iv) the respective prosecutor's office.

8. In furtherance of the Board's obligation to conduct a full and fair hearing, the following pardon hearing procedures apply:

(a) The pardon applicant shall personally appear and shall be required to testify. The applicant may designate a few family members or other supporters to offer testimony at the hearing, if time allows.

(b) Any victim of a conviction for which a hearing has been scheduled may offer testimony, or may submit written material concerning the pardon request. Any victim may designate a representative to testify or speak on the victim's behalf at a pardon hearing.

(c) An authorized representative of the arresting or investigative agency, sentencing court or prosecutor's office for each conviction which is the subject of the hearing may offer testimony or may submit written material concerning the pardon request.

(d) The Board may subpoena any person to attend and testify at a pardon hearing if it determines that such testimony will aid the Board in making a decision regarding the pardon request.

(e) Any person not otherwise specified in this rule may submit letters in support of or in opposition to a pardon request.

(f) All testimony or written material regarding a pardon request must be relevant, and must comply with all other Board administrative rules.

(g) Statements or other material submitted regarding a pardon application or hearing:

(i) may not be submitted anonymously;

(ii) may not be based upon hearsay; and

(iii) shall only be based upon the personal knowledge or opinion of the person submitting the statement or material.

(h) The Board may refuse to accept, remove from an offender's file or pardon application, or refuse to consider any statement or material submitted which is irrelevant, defamatory, hearsay, or which does not otherwise conform to Board rules.

9. A pardon hearing may be conducted by the full board, or by a panel or a single board member assigned by the board chair. If conducted by a panel of the board, the board chair may appoint members to the panels in any combination.

10. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

11. The Board may grant or deny a pardon by majority vote. Pardon decisions are final and are not subject to judicial review.

12. Upon granting a pardon, the Board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) An expungement order, issued by the Board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(b) The board shall provide clear written directions to the pardon recipient along with a list of agencies known to be affected by the expungement order.

13. The Board may dispense with any requirement created by this rule for good cause.

KEY: pardons

July 7, 2016	**Art. VII Sec. 12**
Notice of Continuation January 31, 2012	**77-27-1(14)**
	77-27-5
	77-27-5.1
	77-27-9

R708. Public Safety, Driver License.
R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language.
R708-46-1. Purpose.

Effective July 1, 2011, the Utah Driver License Division shall allow an applicant for a limited-term driver license to take the knowledge test on the state of Utah traffic laws in the person's native language the first time the person applies for a limited-term license certificate.

R708-46-2. Authority.

This rule is authorized by Section 53-3-206.

R708-45-3. Definitions.

(1) "Refugee" means a person who has entered into the United States in refugee status.

(2) "Approved Asylee" means a person who has an approved application for asylum in the United States or who has a pending application for asylum in the United States.

(3) "Limited-Term License Certificate" means the evidence of the privilege granted and issued under Chapter 53-3 to drive a motor vehicle to a person whose privilege was obtained providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(B).

R708-46-4. Requirements.

(1) The first time an applicant with a refugee or approved asylee status applies for a limited-term certificate they shall be given the opportunity to take the knowledge test in their native language.

(2) The Division of Workforce Services will maintain a list of qualified interpreters on the web.

R708-46-5. Procedures.

(1). The applicant must schedule an appointment for their first test using the on-line scheduler.

(2). The applicant must arrange for an interpreter approved by the Division of Workforce Services to accompany them for the test.

(a)The examiner will print a test from the testing kiosk server.

(b) The examiner will observe the interpreter read the test questions and answers to the applicant in their native language.

(c) Upon completion of the test, the examiner will:

(1) Grade the test

(2) Inform the applicant of the test score.

(3) Enter the results of the test on the applicant's driver license record.

KEY: limited-term driver license; knowledge test; refugee; approved asylee
July 12, 2011 53-3-206
Notice of Continuation July 7, 2016

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-360. Certificate of Eligibility for Removal from the Sex Offender and Kidnap Offender Registry.
R722-360-1. Purpose.

The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from the Utah Sex Offender and Kidnap Offender Registry (SOR) pursuant to Section 77-41-112.

R722-360-2. Authority.

This rule is authorized by Subsection 63G-4-203(1).

R722-360-3. Definitions.

(1) Terms used in this rule are defined in Section 77-41-102.

(2) In addition:

(a) "SOR certificate of eligibility" has the same meaning as "certificate of eligibility" as defined in Subsection 77-41-102(3);

(b) "petitioner" means a person seeking an SOR certificate of eligibility from the bureau; and

(c) "traffic offense" has the same meaning as defined in Subsection 77-40-102(11).

R722-360-4. Application for a Certificate of Eligibility for Removal.

(1)(a) A person may apply for an SOR certificate of eligibility by submitting a completed Application for Removal of Name from the Sex Offender/Kidnap Registry form to the bureau.

(b) The application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for an SOR certificate of eligibility found in Subsections 77-41-112(1) through 77-41-112(3).

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine whether the petitioner meets the requirements for an SOR certificate of eligibility, the bureau may require the petitioner to submit additional information.

(4) If the bureau finds that the petitioner meets the requirements for the issuance of an SOR certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner must pay the issuance fee established by the bureau in order to receive the SOR certificate of eligibility.

(5) If the bureau finds that the petitioner does not meet the criteria for the issuance of an SOR certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-360-5.

R722-360-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility for Removal.

(1) A petitioner may seek agency review of the denial of an application for an SOR certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for agency review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) indicate the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for an SOR certificate of eligibility.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If further review indicates that the petitioner meets the requirements for the issuance of an SOR certificate of eligibility, the order shall indicate that the petitioner must pay the issuance fee before receiving the SOR certificate of eligibility.

(c) If further review indicates that the petitioner does not meet the requirements for an SOR certificate of eligibility, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-360-6.

R722-360-6. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for an SOR certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date that the bureau's final written order is issued.

KEY: certificate of eligibility for removal, sex offender registry, kidnap offender registry

December 22, 2015	**63G-4-203(1)**
	77-41-112
	77-41-102
	77-40-102(11)

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-390. Certificate of Eligibility for Removal from the Utah White Collar Crime Offender Registry.
R722-390-1. Purpose.

The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry (WCCR) pursuant to Section 77-42-108.

R722-390-2. Authority.

This rule is authorized by Subsection 63G-4-203(1).

R722-390-3. Definitions.

(1) Terms used in this rule are defined in Section 77-42-102.

(2) In addition:

(a) "WCCR certificate of eligibility" has the same meaning as "certificate of eligibility" as defined in Subsection 77-42-102(4);

(b) "petitioner" means a person seeking a WCCR certificate of eligibility from the bureau; and

(c) "traffic offense" has the same meaning as defined in Subsection 77-40-102(11).

R722-390-4. Application for a Certificate of Eligibility for Removal.

(1)(a) A person may apply for a WCCR certificate of eligibility by submitting a completed Application for Removal of Name from the White Collar Crime Offender Registry form to the bureau.

(b) The application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for a WCCR certificate of eligibility found in Subsection 77-42-108(2)(b).

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine whether the petitioner meets the requirements for a WCCR certificate of eligibility, the bureau may require the petitioner to submit additional information.

(4) If the bureau finds that the petitioner meets the requirements for the issuance of a WCCR certificate of eligibility, the bureau shall send the WCCR certificate to the petitioner at the address indicated on the application form.

(5) If the bureau finds that the petitioner does not meet the criteria for the issuance of a WCCR certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-390-5.

R722-390-5. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility for Removal.

(1) A petitioner may seek agency review of the denial of an application for a WCCR certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for agency review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) indicate the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for a WCCR certificate of eligibility.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If further review indicates that the petitioner meets the requirements for the issuance of a WCCR certificate of eligibility, the order shall indicate that the petitioner must pay the issuance fee before receiving the WCCR certificate of eligibility.

(c) If further review indicates that the petitioner does not meet the requirements for a WCCR certificate of eligibility, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-390-6.

R722-390-6. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for a WCCR certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date the bureau's final written order is issued.

KEY: certificate of eligibility for removal, white collar crime offender registry, white collar crime offenders
December 22, 2015 **63G-4-203(1)**
77-42-108
77-42-102
77-40-102(10)

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

(1) Definitions.

(a) "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

(b) "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

(c) "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

(i) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

(ii) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

(iii) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

(d) "Solicitation" means:

(i) speech or conduct that explicitly or implicitly invites an order; and

(ii) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

(2) Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

(3) Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

(a) they maintain no office nor stocks of goods in Utah, and

(b) they engage in no other activities in Utah.

(4) Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

(5) Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

(6) Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

(7) Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

(8) Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

(9) Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

(10) P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Subsection 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

(a) Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

(b) For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

(11) The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

(a) making repairs or providing maintenance or service to the property sold or to be sold;

(b) collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

(c) investigating credit worthiness;

(d) installation or supervision of installation at or after shipment or delivery;

(e) conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

(f) providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

(g) investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

(h) approving or accepting orders;

(i) repossessing property;

(j) securing deposits on sales;

(k) picking up or replacing damaged or returned property;

(l) hiring, training, or supervising personnel, other than personnel involved only in solicitation;

(m) using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

(n) maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

(o) carrying samples for sale, exchange or distribution in any manner for consideration or other value;

(p) owning, leasing, using, or maintaining any of the following facilities or property in-state:

(i) repair shop;

(ii) parts department;

(iii) any kind of office other than an in-home office;

(iv) warehouse;

(v) meeting place for directors, officers, or employees;

(vi) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(vii) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(viii) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(ix) real property or fixtures to real property of any kind;

(q) consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

(r) maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(i) the maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule;

(ii) for purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office;

(s) entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

(t) conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

(12) The following in-state activities will not cause the loss of protection for otherwise protected sales;

(a) soliciting orders for sales by any type of advertising;

(b) soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

(c) carrying samples and promotional materials only for display or distribution without charge or other consideration;

(d) furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

(e) providing automobiles to sales personnel for their use in conducting protected activities;

(f) passing orders, inquiries and complaints on to the home office;

(g) missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

(h) coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

(i) checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

(j) maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

(k) recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

(l) mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

(m) owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

(13) P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

(a) Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

(i) soliciting sales;

(ii) making sales;

(iii) maintaining an office.

(b) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

(c) Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

(14) The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Subsection 59-7-318(2) will apply.

(15) The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

(16) A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

(17) The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Allocation" means the assignment of nonbusiness income to a particular state.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Base of operations" means the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the taxpayer or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other function necessary to the exercise of his trade or profession at some other point or points.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer, or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations.

(e) "Business income" means income of any type or class, and from any activity, that meets the relationship described in Subsection (2)(b), the transactional test, or Subsection (2)(c), the functional test. The classification of income by the labels occasionally used, such as manufacturing income, compensation

for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income is of no aid in determining whether income is business or nonbusiness income.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) "Employee" means an:

(i) officer of a corporation; or

(ii) individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(h) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange or property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Subsection (11).

(i) "Nonbusiness income" means all income other than business income.

(j) "Place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(k) "Taxpayer" means a corporation as defined in Section 59-7-101.

(l) "To contribute materially" includes being used operationally in the taxpayer's trade or business. Whether property contributes materially is not determined by reference to the property's value or percentage of use. If an item of property contributes materially to the taxpayer's trade or business, the attributes, rights, or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business.

(m) "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Utah.

(2) Business and Nonbusiness Income.

(a) Apportionment and Allocation. Section 59-7-303 requires that every item of income be classified as either business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income.

(b) Transactional Test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within the state, the resulting income of the transaction or activity is business income for Utah purposes. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in this state.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted, or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, those activities do not satisfy the transactional test. The transactional test includes income from sales of inventory, property held for sale to customers, and services commonly sold by the trade or business. The transactional test also includes income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(c) Functional Test. Business income also includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(i) The following definitions apply to this Subsection (2)(c).

(A) "Acquisition" means the act of obtaining an interest in property.

(B) "Disposition" means the act, or the power, of relinquishing or transferring an interest in or control over property to another, either in whole or in part.

(C) "Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner that materially contributes to the production of business income.

(D) "Management" means the oversight, direction, or control, whether directly or by delegation, of the property for the use or benefit of the trade or business.

(E) "Property" includes an interest in, control over, or use of property, whether the interest is held directly, beneficially, by contract, or otherwise, that materially contributes to the production of business income.

(ii) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted

within the state. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time, generally five years, or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, has lost its character as a business asset and is not subject to this subsection. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

(iii) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income if the property is or was used in the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to Subsection (2)(c)(iii).

(B) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iv) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(v) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in this state.

(vi) If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to this state, or includes the original cost in the property factor, it is presumed that the item of property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(vii) Application of the functional test is generally unaffected by the form of the property, whether tangible or intangible, real or personal. Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component of the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this Subsection (2)(c)(vii).

(B) While apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, that is, the same unitary business, establishment of that relationship is not the exclusive basis for concluding that the income is subject to apportionment.

(C) It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment.

(d) Relationship of Transactional Test and Functional Tests to the United States Constitution.

(i) The due process clause and the commerce clause of the United States Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extra-territorial state taxation afforded by these clauses is often described as the unitary business principle. The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted as least in part in the state.

(ii) The unitary business conducted in this state includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity, in the case of the transactional test, or the property, in the case of the functional test, to be tied to the same trade or business that is conducted within the state. Determination of the scope of the unitary business conducted in the state is without regard to the extent to which this state requires or permits combined reporting.

(e) Business and Nonbusiness Income Application of Definitions.

(i) Rents From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business and therefore is includable in the property factor under Subsection (8)(a)(i). Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this subsection.

(ii) Gains or Losses From Sales of Assets. Gain or loss from the sale, exchange, or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income or it was previously included in the property factor and later removed from the property factor before its sale, exchange, or other disposition, the gain or loss constitutes nonbusiness income. See Subsection (8)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends were received arose out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(v) Patent and Copyright Royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the patent or copyright is an integral, functional, or operational component of the taxpayer's trade or business operations, or otherwise

materially contributes to the production of business income of the trade or business operations.

(vi) Proration of Deductions. In most cases, an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases, an allowable deduction may be applicable to the business incomes of more than one trade or business or several items of nonbusiness income. In those cases, the deduction shall be prorated among those trades or businesses and those items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(f)(i) A schedule must be submitted with the return showing the:

(A) gross income from each class of income being allocated;

(B) amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) total amount of the applicable expenses for each income class; and

(D) net income of each income class.

(ii) The schedule shall indicate items of income and expenses allocated both to the state and outside the state.

(g) Year to Year Consistency. In filing returns with the state, if the taxpayer departs from or modifies the manner of prorating any deduction used in returns for prior years in a material way, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(h) State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of any material variance.

(3) Unitary Business.

(a) Unitary Business Principle.

(i) The Concept of a Unitary Business. A unitary business is a single economic enterprise that is made up of either separate parts of a single business entity or a group of business entities related through common ownership that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in this state that comes from being part of a unitary business conducted both within and without the state is what provides the constitutional due process definite link and minimum connection necessary for the state to apportion business income of the unitary business, even if that income arises in part from activities conducted outside the state. The business income of the unitary business is then apportioned to this state using an apportionment percentage provided by Section 59-7-311. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(ii) Constitutional Requirement for a Unitary Business. The sharing or exchange of value described in Subsection (3)(a)(i) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. In this state, the unitary business principle shall be applied to the fullest extent allowed by the United States Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of those activities or entities would not be allowed by the United States Constitution.

(iii) Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one unitary business. In those cases, it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(iv) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a group of business entities related through common ownership, as defined in Section 59-7-101.

(b) Determination of a Unitary Business.

(i) A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 US 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular characteristic of a business operation may be suggestive of one or more of the factors mentioned above.

(ii) Description and Illustration of Functional Integration, Centralization of Management, and Economies of Scale.

(A) Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

(I) Sales, Exchanges, or Transfers. Sales, exchanges, or transfers (collectively "sales") of products, services, and intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to affect the intercompany sales, because those sales can represent an assured market for the seller or an assured source of supply for the purchaser.

(II) Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when the marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same

enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. That activity, however, is relevant to determining the existence of economies of scale and centralization of management.

(III) Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(IV) Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration.

(V) Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings and is significant to each entity's operations or sales, provides evidence of functional integration.

(VI) Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending that serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(B) Centralization of Management. Centralization of management exists when directors, officers, and other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role may be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

(I) Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

(II) Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(C) Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

(I) Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

(II) Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market provides evidence of economies of scale.

(c) Indicators of a Unitary Business.

(i) Business activities that are in the same general line of business generally constitute a single unitary business, as for example, a multistate grocery chain.

(ii) Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(iii) Business activities that might otherwise be considered as part of more than one unitary business may constitute one unitary business when the factors outlined in Subsection (3)(b) are present. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business the normal matters a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

(4) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) If a taxpayer makes an election to calculate its apportionment fraction under Subsection 59-7-311(2)(c) and one or more of the factors listed in Subsection 59-7-311(2)(c)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the

factors present and dividing that sum by the number of factors present.

(B) If a taxpayer makes an election to double weight the sales factor under Subsection 59-7-311(2)(d) and one or more of the factors listed in Subsection 59-7-311(2)(d)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in subsection 59-7-311(2)(d)(i), and dividing that sum by the denominator indicated in Subsection 59-7-311(2)(d)(ii), reduced by the sum of one if the property factor is missing, one if the payroll factor is missing, and two if the sales factor is missing.

(C) For a taxable year that begins on or after January 1, 2011, but begins on or before December 31, 2011, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(a)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(a)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(a)(ii), reduced by the number of missing factors.

(D) For a taxable year that begins on or after January 1, 2012, but begins on or before December 31, 2012, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(b)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(b)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(b)(ii), reduced by the number of missing factors.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(5) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(6) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302, other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(7) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (8), the payroll factor, see Subsection (9), and the sales factor, see Subsection (10) of the trade or business of the taxpayer. For exceptions see Subsection (11).

(8) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (8)(g).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or

property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time, normally five years, during which the property is no longer held for use in the trade or business.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Property Factor Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection (11)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (8)(g).

(9) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(d) Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(e)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(f) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(g) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Subsection (9). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(h) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(10) Sales Factor. In General.

(a) Section 59-7-302 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the

rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Subsection (11)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (11)(d).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (10)(e) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f)(i) Sales Other than Sales of Tangible Personal Property in this State.

(ii) In general, Subsections 59-7-319(2) through (7) provide for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government).

(g) Receipts from the Performance of Services.

(i) Under Subsection 59-7-319(3), gross receipts from the performance of a service are considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. In general, the "benefit of the service" approach under the statute reflects a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

(ii) For businesses engaged in certain industries, specific sourcing rules and guidelines that address the attribution of gross receipts from the performance of a service have been adopted. See Subsection (11)(b).

(iii) The benefit from performance of a service is in this state if any of the following conditions are met:

(A) The service relates to tangible personal property and is performed at a purchaser's location in this state.

(B) The service relates to tangible personal property that the service provider delivers directly or indirectly to a purchaser in this state after the service is performed.

(C) The service is provided to an individual who is physically present in this state at the time the service is received.

(D) The service is provided to a purchaser exclusively engaged in a trade or business in this state and relates to that purchaser's business in this state.

(E) The service is provided to a purchaser that is present in this state and the service relates to that purchaser's activities in this state.

(iv) If the benefit of the service is received in more than one state, the gross receipts from the service are to be sourced using reasonable and consistent methods of analysis to determine in which state the greater benefit of the service is received. Such methods must be supported by the service provider's business records at the time the service was provided. If the benefit of a service is received in Utah and one or more other states and the state where the greater benefit of the service is received cannot otherwise be readily determined through the provisions of this rule, the following sourcing rules are applied in sequential order:

(A) The receipt is sourced to this state if the office from which the purchaser placed the order for the service is in this state.

(B) If the office from which the order was placed cannot be determined, the receipt is sourced to this state if the

purchaser's billing address is in this state.

(C) If the state of the purchaser's billing address cannot be determined, the receipt shall be included in the sales factor in this state.

(v) The term, "gross receipt from the performance of a service" applies to each individual sales transaction, and each sales transaction is considered a discrete transaction for purposes of determining whether the purchaser of the service receives a greater benefit of the service in this state than in any other state.

(vi) In determining whether the greater benefit from the performance of a service is received in this state, the benefit of the service in this state must be compared to the benefit of the service received in each individual state in which any benefit of the service is received, i.e., the benefit of the service received in Utah is not compared to the benefit of the service received in all other states combined.

(vii) In the context of a combined report, the sale of services between members of a unitary group included in a combined report shall be excluded from the combined report sales factor.

(viii) The following examples are provided to illustrate the application of Utah law in regard to receipts from the performance of a service:

(A) A company headquartered and primarily conducting business in Utah contracts for general accounting services with an accounting firm located in another state. The receipts for the accounting service are sourced to Utah regardless of where the services are performed, since the greater benefit of the services is received in this state.

(B) A Utah retailer hires a California agency to develop an advertising campaign targeting its Utah customers. The receipts for the advertising services are sourced to Utah regardless of where the services are actually performed.

(C) A multistate company hires a Colorado firm to perform an appraisal of its business properties in Utah and Colorado. The company has several locations in Utah. However, the headquarters of the company is in Colorado and the value of its properties located in Colorado exceed the value of its properties in Utah. The appraisal fee is not broken down by location of the assets or properties of the company. Use of the property values for each state to determine where the greater benefit of the appraisal services occurred is a reasonable method to determine where the appraisal service fees should be sourced and the service would be sourced to Colorado. However, if the appraisal fees are broken out separately for Colorado and Utah properties or the billing information by state is known, the appraisal fees pertaining to the Utah properties are sourced to Utah and the appraisal fees pertaining to the Colorado properties are sourced to Colorado.

(D) An Internet/cable television service provider provides services to purchasers in Utah as well as other surrounding states. As all of the benefit from the services provided to Utah purchasers is received at residences or business locations in Utah, the receipts from the services provided to Utah purchasers are sourced to Utah.

(E) Data processing services are performed for a company conducting interstate business. The services relate to computer systems that are mainly located in Utah although a few terminals are spread over several other states. Since the data processing services relate to the computer systems that are mainly located in Utah, the greater benefit of the service is considered to be received in Utah and the receipts from the services are sourced to Utah regardless of where the services are actually performed. The location of data processing equipment associated with the data processing services is a reasonable method of sourcing receipts from those services.

(F) Engineering services are performed in connection with a property being constructed in Utah. Since all of the benefit of the service is received in Utah where the construction takes place, the receipts from the engineering services are sourced to Utah regardless of where the actual engineering services are performed.

(G) A California law firm is retained to represent multiple plaintiffs in a class action lawsuit filed against a Utah corporation in a Utah court. Receipts received by the firm for the legal services are sourced to Utah notwithstanding the fact that some of the services were performed outside Utah. The greater benefit of the services is received in Utah since the lawsuit was filed against a Utah corporation in a Utah court.

(H) A moving company performs a moving service for an individual that has been transferred from New Jersey to Utah. The charges for services in connection with the move and unpacking services are sourced to Utah because the greater benefit of the moving services is received by the purchaser in the state to which the property is moved. However, any charges for specific services such as storage or packing that are performed outside of Utah, and that are separately stated, are not sourced to Utah.

(I) A car rental agency rents a vehicle that is picked up from and returned to one of its business locations in Utah. The receipts from the rental are sourced to Utah regardless of whether the vehicle leaves this state for the duration of the rental period.

(11) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;

(ii) the exclusion of any one or more of the factors;

(iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) For businesses engaged in one or more of the following industries, specific statutes, rules, and guidelines have been adopted:

(i) airlines see Sections 59-7-312, 59-7-315, and 59-7-317;

(ii) financial institutions see rule R865-6F-32;

(iii) long term construction contractors see rule R865-6F-16;

(iv) publishing companies see rule R865-6F-31;

(v) railroads see rule R865-6F-29;

(vi) registered securities or commodities brokers and dealers see rule R865-6F-36;

(vii) telecommunications companies see rule R865-6F-33; and

(viii) trucking companies see rule R865-6F-19;and

(ix) businesses or affiliates of businesses providing services to a regulated investment company see Section 59-7-319.

(c) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under Subsection (8)(f)(i) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market

value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(d) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where intangible property generates business income and the state in which that intangible property is being used can be determined, that income is included in the denominator of the sales factor and, if and to the extent that property is used in this state, in the numerator of the sales factor as well. For example, usually the state in which the intangible property is being used can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (10)(a)(i), and income from the sale, licensing or other use of intangible personal property.

(A) Where intangible property generates business income and the state in which that intangible property is being used cannot be determined, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (11)(d)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (11)(d)(iv). This Subsection (11)(d)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (11)(d)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (11)(d)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this Subsection (11)(d)(iv)(D), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(e) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(f) Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

(1) It is the policy of the commission, in matters involving the determination of income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances the federal and state statutes differ, and as a result the federal rulings, regulations, and decisions may not be followed. Furthermore, in some instances, the commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

(2) The items of major importance ordinarily allowed in conformity with federal requirements are:

(a) depreciation,
(b) depletion,
(c) exploration and development expenses,
(d) intangible drilling costs,
(e) accounting methods and periods, and
(f) Subpart F income.

(3) The following are the major items that require different treatment under the state and federal statutes:

(a) combined reporting,
(b) consolidated returns,
(c) dividends received deduction,
(d) municipal bond interest,
(e) capital loss deduction,
(f) loss carry-overs and carry-backs, and
(g) gross-up on foreign dividends.

R865-6F-15. Installment Basis of Reporting Income in Year

of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long- term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000

long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

(6) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (6)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (6)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (6)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(9).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(10).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

(d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 7, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 7, and Title 63M, Chapter 1 against Utah corporate franchise tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9),and the sales factor in accordance with R865-6F-8(10).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located

within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(9).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(10).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(11)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through(vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the

taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary

group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the purchaser of the services receives a greater benefit of the service in this state than in any other state.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commission to use, or the commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(10) and (11).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the commission to use a different method, or the commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the commission or by the taxpayer when approved in writing by the commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commission to use a different method, or the commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this

state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be

designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9) and the sales factor in accordance with R865-6F-8(10).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in commission rule R865-6F-8(8).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

(i) for which the broker or dealer does not take title; and

(ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to

produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under that section.

R865-6F-39. Definitions Related to Captive Real Estate Investment Trust and Foreign Real Estate Investment Trust Pursuant to Utah Code Ann. Section 59-7-101.

The following definitions apply to the definitions of captive real estate investment trust and foreign real estate investment trust in Section 59-7-101.

(1) "Cash or cash equivalents" means currency and coins, bank balances, negotiable money orders, checks, and highly liquid investments that can easily be converted into cash, such as treasury bills, certificates of deposit, marketable securities, and negotiable financial instruments.

(2) "Established securities market" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(2) (2007), which is adopted and incorporated by reference.

(3) "Listed Australian property trust" means:

(a) an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; and

(b) an entity organized as a trust, provided that an entity listed in Subsection (3)(a) owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests or shares of that trust.

(4) "Regularly traded" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(4) (2007), which is adopted and incorporated by reference.

R865-6F-40. Foreign Operating Company Subtraction from Unadjusted Income Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-106.

(1) The activities of a partnership interest are taken into account in determining whether a corporation qualifies as a foreign operating company and calculating any adjustment for which the corporate partner that is a foreign operating company is eligible.

(a) Partnership activities are attributed to the corporation to the extent of the corporation's ownership interest in the partnership.

(b) The character of each class or type of partnership income passes through to the corporate partner. Accordingly, a corporate partner that is a foreign operating company may not make a subtraction from unadjusted income as a foreign operating company for partnership income generated from intangible property and assets held for investment and not from a regular business trading activity.

(2) Prior to determining the foreign operating company subtraction, a foreign operating company that is a member of a unitary group shall eliminate a transaction between the foreign operating company and a partnership held directly or indirectly by a member of the same unitary group to the extent of the interest the foreign operating company holds in the partnership.

KEY: taxation, franchises, historic preservation, trucking industries

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9-2-401 through 9-2-415
16-10a-1501 through 16-10a-1533
53B-8a-112
59-1-1301 through 59-1-1309
59-6-102
59-7
59-7-101
59-7-102

59-7-104
through
59-7-106
59-7-108
59-7-109
59-7-110
59-7-112
59-7-302
through
59-7-321
59-7-402
59-7-403
59-7-501
59-7-502
59-7-505
59-7-601
through
59-7-614
59-7-608
59-7-701
59-7-703
59-10-603
59-13-202
59-13-301
63M-1
63N-2-201 through 63N-2-215

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Sections 59-10-103 and 59-10-136.

(1) For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

(2) Determination of resident individual status for military servicepersons.

(a) The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows.

(i) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

(ii) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

(b) Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of Section 59-10-136.

(c) A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(1) Except as provided in Subsection (2), a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate:

(a) state taxable income as follows:

(i) Determine the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

(ii) Allocate a portion of each deduction and add back item described in Section 59-10-114 to each spouse by:

(A) dividing each spouse's FAGI by the combined FAGI of both spouses, and rounding the resulting percentage to four decimal places; and

(B) multiplying the resulting percentage by any deductions and add back items described in Section 59-10-114; and

(b)(i) shares of the taxpayer tax credit authorized in Section 59-10-1018 by multiplying the percentage calculated under Subsection (1)(a)(ii)(A) by the:

(A) itemized or standard deduction; and

(B) state exemption for dependents.

(ii) For purposes of Subsection (1)(b)(i), each spouse shall claim his or her full state personal exemption.

(2) A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in Subsection (1) if they can demonstrate to the satisfaction of the commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

(1) Definitions.

(a) "AGI" means adjusted gross income, as defined by Section 59-10-103.

(b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

(2) The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as defined under Section 59-10-103. This percentage is the Utah portion of AGI divided by the total AGI, not to exceed 100 percent.

(3) The Utah portion of a part-year resident's AGI shall be determined as follows:

(a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.

(b) Dividends actually or constructively received while in resident status shall be included in the Utah portion of AGI. Any dividend exclusion shall be deducted from the Utah portion of AGI using the percentage of excludable dividends received

while in resident status, compared to the total excludable dividends.

(c) All interest actually or constructively received while in resident status shall be included in the Utah portion of the AGI.

(d) All AGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of AGI.

(4)(a) Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of AGI:

(i) if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

(ii) if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

(b) Income or loss that does not meet Subsection (4)(a) shall be included in the Utah portion of AGI only to the extent the income or loss is derived from Utah sources as determined under Section 59-10-117.

(5) Moving expenses deducted on the federal return may be deducted from the Utah portion of AGI only to the extent that they are for moving into Utah and within Utah.

(6) Employee business expenses may be deducted from the Utah portion of AGI only to the extent that they pertain to the production of income included in the Utah portion of AGI.

(7) Payments by a self-employed person to a retirement plan that reduce the total AGI may be deducted from the Utah portion of AGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

(8) Other income, losses or adjustments applicable in determining total AGI may be allowed or included in the Utah portion of AGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) A pass-through entity must withhold and pay over to the state a tax on:

(a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and

(b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.

(i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.

(ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

(a) name;

(b) address;

(c) social security number;

(d) percentage of ownership in pass-through entity;

(e) Utah income attributable to that pass-through entity taxpayer; and

(f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions;

(ii) total foreign taxes paid or accrued; and

(iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the Income/loss reconciliation" line shall be used for purposes of this rule.

(4) A pass-through entity shall calculate the tax it is

required to withhold on behalf of pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

(5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:

(i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

(iii) a person exempt from state income tax under Section 59-10-104.1.

(6) For purposes of Subsections 59-10-1403.2(5) and (6), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;

2. the employer's Utah withholding tax account number;

3. the amount of compensation;

4. the amounts of federal and Utah state income tax withheld;

5. the social security number of the employee;

6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and

7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and

2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

(1) This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

(2) An employer may file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer files:

(a) a federal Schedule H; or

(b) a Form 944, Employer's ANNUAL Federal Tax Return, with the Internal Revenue Service.

(3) The annual withholding return and payment under

Subsection (2) are due by January 31 of the year succeeding the year for which the payment and return apply.

(4) An employer withholding an average of $1,000 or more per month shall prepay withholding taxes on a monthly basis in the manner prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-1-1406.

(1) Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

(2) Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All records shall be made available to an authorized agent of the commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown on the Utah forms TC-65 Schedule K and Schedule K-1.

(3) A partnership may satisfy the requirement to file a return with the commission by maintaining records that show each partner's share of income, losses, credits, and other distributive items, and making those records available for audit if:

(a) all of the partnership's partners are resident individuals; and

(b) the partnership is not a pass-through entity taxpayer.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any

audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-1006.

(1) Definitions

(a) "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

(b) "Qualified rehabilitation expenditures" does not include movable furnishings.

(c) "Residential" as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

(2) Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

(3) Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

(4) In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

(a) The project approved under Subsection (2) must be completed.

(b) Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

(c) Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

(d) Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-1006 must be met, within 36 months of the approval received pursuant to Subsection (2).

(e) During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

(5) Upon issuing a certification number under Subsection (4), the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

(6) Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under Subsection (4).

(7) Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-1006.

(8) Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

(9) Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 10, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 10, and Title 63M, Chapter 1 against Utah individual income tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-9I-44. Mandatory Withholding of Income for

Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

(1) Definitions.

(a) "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

(i) Duty days includes:

(A) days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in Subsection (1)(a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team; and

(B) game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(ii) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

(iii) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

(iv) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

(v) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

(b) "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

(c) "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team that is not incorporated or organized under the laws of this state.

(d) "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

(i) Total compensation does not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(ii) For purposes of this rule, "bonuses" subject to the allocation procedures described in Subsection (5) are:

(A) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(B) bonuses paid for signing a contract, unless all of the following conditions are met:

(I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(II) the signing bonus is payable separately from the salary and any other compensation; and

(III) the signing bonus is nonrefundable.

(e) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

(i) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

(ii) during the taxable year on a date that does not fall within the period in Subsection (1)(e)(i), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

(2) The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

(3) If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

(4) A professional athletic team:

(a) is an employer for purposes of Title 59, Chapter 10, Part 4, Withholding of Tax; and

(b) may not be relieved from the requirements imposed on an employer under Title 59, Chapter 10, Part 4, Withholding of Tax.

(5) Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

(6) The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

(7)(a) Professional athletic teams shall withhold and remit tax on behalf of nonresident professional athletes on a form prescribed by the commission.

(b) A schedule shall be included with the return, listing all of the following information for each nonresident member of a professional athletic team:

(i) name;

(ii) address;

(iii) social security number;

(iv) income attributable to Utah for the nonresident member of a professional athletic team;

(v) total compensation paid to the nonresident member of a professional athletic team by the professional athletic team;

(vi) the nonresident member of a professional athletic team's duty days both within and without the state;

(vii) the nonresident member of a professional athletic team's duty days within the state;

(viii) Utah tax deducted and withheld; and

(ix) federal income tax deducted and withheld.

(8) A nonresident member of a professional athletic team

is not required to file an individual income tax return if:

(a) the professional athletic team deducts and withholds a tax on behalf of the nonresident member of a professional athletic team;

(b) the nonresident member of a professional athletic team does not seek to claim a tax credit under Title 59, Chapter 10, Individual Income Tax Act; and

(c) the nonresident member of a professional athletic team does not have adjusted gross income derived from or connected with Utah sources other than the income the member of a professional athletic team receives from the professional athletic team.

R865-9I-46. Medical Savings Account Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021.

(1) Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

(2) In addition to the requirements of Subsection (1), account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

(a) the beginning balance in the account;

(b) the amount contributed to the account;

(c) the account's earnings;

(d) distributions for qualified medical expenses;

(e) distributions for non-medical expenses not subject to penalty;

(f) distributions for non-medical expenses subject to penalty;

(g) the amount of penalty required to be withheld and remitted to the state;

(h) the account administrator's administrative fee charged to the account; and

(i) the ending balance in the account.

(3) The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

(5) The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before March 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-9I-50. Addition to Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to adjusted gross income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

(1) interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

(2) for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-9I-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

(a) of any change of address of the business;

(b) of a change of character of the business, or

(c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

(a) mail is returned as undeliverable as addressed and unable to forward;

(b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;

(c) the person fails to renew its annual business license with the Department of Commerce; or

(d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-9I-52. Credit For Health Benefit Plan Insurance Pursuant to Utah Code Ann. Section 59-10-1023.

A credit for health benefit plan insurance under Section 59-10-1023 shall be determined in the manner that provides the

greatest possible credit.

R865-9I-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-9I-54. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Sections 59-10-1014 and 59-10-1106.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Sections 59-10-1014 or 59-10-1106 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under those sections.

R865-9I-55. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403.

(1) "Qualified subchapter S subsidiary" is as defined in Section 1361(b), Internal Revenue Code.

(2) For purposes of Title 59, Chapter 10, Part 14, a pass-through entity that is a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

(3) A pass-through entity that is an S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

(4) For purposes of Title 59, Chapter 10, Part 14:

(a) the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

(b) the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

(5) Except as provided in Subsection (4), the apportionment fraction for a pass-through entity that is an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

KEY: historic preservation, income tax, tax returns, enterprise zones

July 14, 2016 31A-32A-106
Notice of Continuation January 3, 2012 53B-8a-112
59-1-1301 through 59-1-1309
59-2-1201
through
59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-108
through
59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-405.5
59-10-406
through
59-10-408
59-10-501
59-10-503
59-10-504
59-10-507
59-10-512
58-10-514
59-10-516
59-10-517
59-10-522
59-10-533
59-10-536
59-10-602
59-10-603
59-10-1003
59-10-1006
59-10-1014
59-10-1017
59-10-1021
59-10-1023
59-10-1106
59-10-1403
59-10-1403.2
59-10-1405
59-13-202
59-13-301
59-13-302
63M-1
63N-2-201 through 63N-2-215

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.

A. To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

1. the last certificate of registration;

2. a lien search from the recording jurisdiction or an "Affidavit of Ownership" in lieu of the lien search.

B. To title or register a repossessed vehicle, an applicant must submit both of the following:

1. the outstanding certificate of title, with the lien recorded in favor of the repossessor;

2. an approved affidavit of repossession, signed by the lien holder recorded on the certificate of title.

C. To title or register a vehicle previously owned by the U.S. Government, an applicant must submit a Certificate of Release of a Motor Vehicle, Standard Form No. 97.

D. To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

1. a certificate of sale bearing the notarized signature of the person who conducted the sale. The certificate must contain the following information:

a. date of sale;

b. name of person to whom the vehicle was sold;

c. complete description of the vehicle;

d. amount due on the contract;

e. date that the amount due became delinquent; and

f. amount received from the sale of the vehicle.

2. a copy of the notice sent to the owner and lien holder of record;

3. proof that notice was published two consecutive weeks prior to sale. If the notice was not published in a newspaper, an affidavit of posting of notices must be furnished. Posting must be at least ten days prior to sale.

E. To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

1. a certified copy of the divorce decree;

2. the outstanding certificate of title;

3. the last registration certificate.

F. To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

1. the outstanding certificate of title, endorsed for transfer by the guardian;

2. the last registration certificate;

3. a certified copy of the court order appointing the guardian.

G. To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

1. legal basis under which the vehicle was impounded and sold:

2. a complete description of the vehicle;

3. name of the purchaser;

4. the notarized signature of the state, city, or county official who conducted the sale.

H. To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the properly notarized power of attorney to the Tax Commission.

I. To title or register a vehicle transferred from a deceased owner when a survivorship affidavit is not applicable, the applicant must submit the outstanding certificate of title and the last registration card. In addition, the applicant must submit one of the following:

1. a certified copy of the final decree of distribution;

2. an order from the court confirming sale;

3. an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

a. When the title is issued in joint ownership where the owners names are connected with "and" or a "/" the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

J. The Tax Commission may issue a title or a dismantle permit upon receipt of a court order or upon receipt of an affidavit and surety bond when satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership.

1. The affidavit must contain each of the following:

a) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

b) an explanation of how the vehicle was obtained and from whom;

c) a statement indicating any outstanding liens or encumbrances on the vehicle;

d) a statement indicating where the vehicle was last titled or registered;

e) a description of the vehicle;

f) any other items pertinent to the acquisition or possession of the vehicle.

2. The Tax Commission may issue a title or a dismantle permit upon receipt of an affidavit and an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit if the vehicle satisfies each of the following conditions:

a) the vehicle is not a motorcycle;

b) the vehicle has a value of $1,000 or less at the time of application;

c) the vehicle is six model years old or older.

3. If the vehicle has a value of $1,000 or less at the time of application, and the vehicle is not more than six model years old, or the vehicle is a motorcycle, a title or dismantle permit may not be issued until the vehicle is physically examined by a qualified investigator appointed by the Tax Commission.

4. If the vehicle has a value in excess of $1,000, the Tax Commission may require a surety bond in addition to the affidavit. The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

K. To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish an affidavit of construction, explaining the acquisition of essential parts and the date construction was completed. The affidavit must be supported by bills of sale or invoices for the parts.

1. An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

2. The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

3. If satisfactory evidence of ownership is lacking, the procedure outlined in J. shall be followed.

4. In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

5. The rebuilt vehicle shall retain the manufacturer's name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the

vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a- 214.

A. In lieu of an original registration card, a copy of a registration card may be carried in an intrastate commercial vehicle or a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The month decal shall be displayed on the license plate in the left position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:

(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:

(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:

(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the

control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a)	Passenger and Commercial	P00001
b)	Motorcycles	M00001
c)	Trailers	T00001
d)	Reconstructed vehicle	R00001
e)	Outboard Motors	E00001
f)	Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

A. A lienholder who lawfully repossesses a vehicle may apply for a certificate of title by paying the title fee and filing all of the following documents:

1. the outstanding Utah certificate of title showing the lien recorded;

2. a notarized affidavit of repossession, signed by the lienholder of record;

3. an application for title, properly signed and notarized.

B. If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

1. the outstanding Utah certificate of title showing a release of all prior liens;

2. an application for title, properly signed and notarized;

3. the title fee.

C. In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

1. the outstanding Utah certificate of title with the lien recorded;

2. an application for title showing the registered owner and the new lienholder;

3. the title fee.

D. In lieu of the required owner's signature under Subsection C.2., the application may be stamped "Assignment of Lien Pursuant to Section 41-1a-607."

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

A. An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

1. The yard must be identified by a conspicuously placed, well-maintained sign that:

a) is at least 24 square feet in size;

b) includes the business name, address, phone number, and hours of business; and

c) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

2. The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

3. The yard must have adequate lighting.

4. A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

5. Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

6. An office shall be located on the premises of the yard.

a) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

b) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

c) If a central office is approved under Subsection 6.b) above, the signs of all storage areas must provide the location of the office.

7. The yard shall provide compressed air and battery boosting capabilities at no additional cost.

B. Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

1. An individual has ownership interest in the vehicle if he:

a) is listed as a registered owner or lessee of the vehicle; or

b) has possession of the vehicle title.

2. An individual must show picture identification as evidence of his ownership interest.

3. The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

C. Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

D. Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the Tax Commission at the time the vehicles are sold.

E. The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the Tax Commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112.

(1) The registration period for aircraft is from January 1 through December 31.

(2) The average wholesale value of an aircraft is obtained from the "average wholesale" column listed in the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

(3) The database maintained by the Division of Aeronautics shall include the following information for each aircraft:

(a) the name and address of the owner of the aircraft;

(b) the airport where the aircraft is hangered;
(c) the FAA number of the aircraft;
(d) the aircraft manufacturer or builder;
(e) the year of manufacture or the year the aircraft was completed and certified for air worthiness by the FAA;
(f) the aircraft model as identified by the manufacturer or builder; and
(g) the aircraft serial number.
(4) Aircraft not legally registered are subject to seizure and impound under the provisions of Section 72-10-112.
(5) The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.
(6) The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:
1. salvage vehicle,
2. dismantled vehicle,
3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;
4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and
5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.
1. Cosmetic repairs include:
a) cracks or chips in windows if the vehicle will pass a safety inspection;
b) paint chips or scratches that do not extend below the rust preventive primer coating;
c) decals or decorative paint;
d) decorative molding and trim made from plastic, light metal, or other similar material;
e) hood ornaments;
f) wheel covers;
g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;
h) vinyl roof covers or imitation convertible tops;
i) rubber inserts in bumpers or bumper guards; and
j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.
2. Cosmetic repairs do not include:
a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;
b) repair or replacement of any sheet metal;
c) repair or replacement of exterior or interior body panels;
d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and
e) cracks or chips in windows if the vehicle will not pass a safety inspection.
3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:
1. Mitchell Collision Estimating Guide;
2. Motor Estimating Guide;
3. Delmar Auto Series Complete Automotive Estimating;
4. CCC Autobody Systems EZEst Software;
5. ADP Collision Estimating Services; or
6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:
1. if one or more interim inspections are required; and
2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").
1. Repairs must be performed in licensed body shops.
2. All repairs must be certified by an individual who:

a) owns or is employed by that body shop;

b) has repaired the vehicle or supervised any repairs he did not make;

c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and

d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by a total of five characters and numerals.

(2)(a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3)(a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9)(a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11)(a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has provided the individual described in Subsection (11)(b)(i) at least 30 days notice that the license plate will be revoked.

(12)(a) To qualify for a search and rescue special group license plate, an applicant must present one of the following:

(i) an official identification card issued by a county sheriff's office identifying the applicant as an employee or volunteer of that county's search and rescue team; or

(ii) a letter on letterhead of the county sheriff's office of the county in which the search and rescue team is located, identifying the applicant as an employee or volunteer of that county's search and rescue team.

(b) The division shall revoke a search and rescue special group license plate issued under Section 41-1a-418 upon receipt of written notification from the county sheriff's office of the county in which the search and rescue team is located, indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the search and rescue team has provided the individual described in Subsection (12)(b)(i) at least 30 days notice that the license plate will be revoked.

(13) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must

reregister the vehicle and obtain new license plates.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-419.

The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-420.

(1) A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

(b) an identification number;

(c) a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

(d) a facsimile of the Great Seal of the State of Utah.

(2) Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

(a) The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

(b) An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

(c) A physician's certification is not required for renewal of a removable windshield placard.

(d) The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(e) The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(3) A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

(b) an identification number;

(c) a date of expiration not to exceed six months from the date of issuance; and

(d) a facsimile of the Great Seal of the State of Utah.

(4) Upon application, a temporary removable windshield placard shall be issued.

(a) The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(b) Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

(c) The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(d) The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(5) Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-422.

(1) "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-422 and that issues a standard collegiate degree.

(2) "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

(1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

(2) Pursuant to Subsection 41-1a-411(2), the division may not issue personalized license plates in the following formats:

(a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

(b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, except as provided in Subsection 41-1a-411(3), "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."

(c) Combinations of letters, words, or numbers that connote:

(i) any intoxicant or any illicit narcotic or drug;

(ii) the sale, use, seller, purveyor, or user of any intoxicant or any illicit narcotic or drug; or

(iii) the physiological or mental state produced by any intoxicant or any illicit narcotic or drug.

(d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

(e)(i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:

(A) illegal activity;

(B) organized crime associations; or

(C) gang or gang terminology.

(iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

(4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

(a) translation from foreign languages;

(b) an upside down or reverse reading of the requested format; and

(c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

(5) The director shall consider the applicant's declared definition of the format, if provided.

(6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

(7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection (2), the division shall again review the format.

(8) If the division determines pursuant to Subsection (2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).

(9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

(10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 72-9-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-40. Age of Vehicle for Purposes of Safety Inspection Pursuant to Utah Code Ann. Section 53-8-205.

A. The age of a vehicle, for purposes of determining the frequency of the safety inspection required under Section 53-8-205, shall be determined by subtracting the vehicle model year from the current calendar year.

R873-22M-41. Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.

(1) Subject to Subsection (3), an insurance company shall receive a salvage certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a salvage vehicle;

(b) a copy of the check issued to the registered owner of the vehicle; and

(c) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(i) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(ii) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered

owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a salvage certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

R873-22M-42. Issuance of Nonrepairable Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.5.

(1) Subject to Subsection (3), an insurance company shall receive a nonrepairable certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a nonrepairable vehicle; and

(b) a copy of the check issued to the registered owner of the vehicle; and

(c)(i) the properly endorsed certificate of title, or other evidence of ownership acceptable to the Motor Vehicle Division; or

(ii) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(A) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(B) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a nonrepairable certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

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July 14, 2016
Notice of Continuation January 3, 2012

41-1a-102
41-1a-104
41-1a-108
41-1a-116
41-1a-211
41-1a-215
41-1a-214
41-1a-401
41-1a-402
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-418
41-1a-419
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41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1005
41-1a-1009 through 41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1220
41-6-44
53-8-205
59-12-104
59-2-103
72-10-109 through 72-10-112
72-10-102

R877. Tax Commission, Motor Vehicle Enforcement.
R877-23V. Motor Vehicle Enforcement.
R877-23V-3. Salesperson Licensed For One Dealer Only Pursuant to Utah Code Ann. Section 41-3-202.

A. The holder of a dealer's license may not hold an additional license to engage in the activities of a salesperson for another dealer.

B. The requirement that a salesperson may be licensed with only one dealer at a time does not preclude dealership owners from being no-fee salespersons for their own dealerships.

R877-23V-5. Temporary Motor Vehicle Registration Permits and Extension Permits Issued by Dealers Pursuant to Utah Code Ann. Section 41-3-302.

(1) Every dealer desiring to issue temporary permits for the operation of motor vehicles shall make application to the Motor Vehicle Enforcement Division. If the privilege is extended, the dealer will receive a series of permits, consecutively numbered. The numbers shall be recorded by the division and charged to the dealer.

(2) If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.

(3) The expiration date on the original permit shall be legible from a distance of 30 feet.

(4) The permit shall be displayed at the rear of the motor vehicle, in a place where the printed information on the permit and the expiration date may be easily seen.

(5) Temporary permits must not be placed in rear windows or permit holders with less than seventy percent light transparency.

(a) If a permit holder is used, it must not cover any of the printed information on the permit, including the expiration date.

(b) If a license plate frame is used in conjunction with a permit holder, it must not cover any printed information or expiration date on the permit.

(c) Temporary permits must be protected from exposure to the weather and conditions that would render them illegible.

(6) If a temporary permit is filled out incorrectly, the sale of the vehicle is rescinded, or for some other reason the permit is unusable, the dealer must return the permit to the Motor Vehicle Enforcement Division, together with the stub, and it will not be considered issued. If the permit is placed on a vehicle and the sale has not been rescinded, the permit will be considered issued and the dealer is liable for the registration fee for the vehicle together with any applicable penalties.

(7) A dealer's temporary permits may be audited at any time and the dealer required to pay for all outstanding permits. The registration fee charged will be for a passenger car unless the dealer is licensed to sell only motorcycles or small trailers.

(a) If the dealer's records indicate that the permit was issued for a vehicle other than that for which the dealer was billed, the dealer must submit the proper fee and penalty.

(b) If the records disclose that the permit was cleared properly, the dealer must furnish the license number of the vehicle for which the permit was issued and the date of issue.

(c) A dealer shall resolve any outstanding permit billings by payment of fees and penalties or by reconciling the permits before any additional permits will be issued to the dealer. This action will not be construed to be a cancellation of a dealer's privilege of issuing temporary permits, but merely a function of the division's routine audit and billing procedure.

(8) The dealer shall keep a written record in numerical sequence of every temporary registration permit issued. This record shall include all of the following information:

(a) the name and address of the person or firm to whom the permit is issued;

(b) a description of the motor vehicle for which it was issued, including year, make, model, and identification number;

(c) date of issue;

(d) license number;

(e) in the case of a commercial vehicle, the gross laden weight for which it was issued.

(9) In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

(a) The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

(b) If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

(c) The dealer must return the permit stub to the division within 45 days from the date it is issued.

(d) A dealer may not issue an extension permit if it is determined that the dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past three months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

(10) All extension permits issued by dealers under this rule are considered issued by the division.

(11) When a motor vehicle is sold for registration in another state, the stub portion of the temporary permit shall be filed with the division within ten days from the date of issue, accompanied by the required fee. The sale must be reported in the dealer's monthly report of sale required by Section 41-3-301(2)(b). If the permit stub and the required fee are not postmarked or received by the division within 45 days, a penalty equal to the required fee shall be collected pursuant to Section 41-3-302.

(12) The temporary registration card, attached to the temporary permit, must be detached and given to the customer at the time the temporary permit is issued. This temporary registration card must be kept in the vehicle while the temporary permit is displayed.

R877-23V-6. Issuance of In-Transit Permits Pursuant to Utah Code Ann. Section 41-3-305.

(1)(a) Transported semitractors are piggy-backed when all of the semitractors being transported are touching the ground.

(b) Each piggy-backed vehicle must have a separate in-transit permit or be properly registered for operation in Utah.

(2) In-transit permits may not be issued for loaded motor vehicles over 12,000 pounds gross laden weight.

(3) A semitractor hauling unlicensed trailers must obtain an in-transit permit for any trailer in contact with the ground.

(4) Subject to Subsections (5) and (6), the following entities may issue in-transit permits:

(a) a licensed dealer that is primarily engaged in the business of auctioning consigned motor vehicles to other dealers or the public; and

(b) a state or local government agency that is engaged in the business of auctioning motor vehicles to dealers or the public.

(5) An entity issuing an in-transit permit under Subsection (4) shall maintain records of all in-transit permits obtained from the division. These records shall include:

(a) vehicle purchaser information;

(b) vehicle identification number; and

(c) evidence that the purchaser has met the requirements

for issuance of the in-transit permit.

(6) An entity described in Subsection (4) that fails to maintain the records required under Subsection (5) may be prohibited from issuing in-transit permits.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

(1)(a) "Advertisement" means any oral, written, graphic, or pictorial statement made that concerns the offering of a motor vehicle for sale or lease.

(b) "Advertisement" includes any statement or representation:

(i) made in a newspaper, magazine, electronic medium, or other publication;

(ii) made on radio or television;

(iii) appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material;

(iv) contained in any window sticker or price tag; and

(v) in any oral statement.

(c) "Advertisement" includes the terms "advertise" and "advertising".

(d) "Advertisement" does not include:

(i) a statement made solely for the purpose of obtaining motor vehicle financing or a motor vehicle title; or

(ii) hand written negotiation sheets between a dealer and a customer of the dealer.

(2) Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

(a) Accuracy. Any advertised statements and offers about a motor vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

(b) Bait. Bait advertising and selling practices may not be used. A motor vehicle advertised at a specific price shall be in the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold. If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised motor vehicle.

(c)(i)(A) Price. When the price or payment of a motor vehicle is quoted, the motor vehicle shall be clearly identified as to make, year, model and if new or used. Except as provided in Subsection (c)(i)(B), the advertised price must include charges that the customer must pay for the motor vehicle, including freight or destination charges, dealer preparation, and dealer handling.

(B) The following fees are not required to be included in the advertised price that the customer must pay for the motor vehicle:

(I) dealer document fees;

(II) if optional, undercoating or rustproofing fees; and

(III) taxes or fees required by the state or a county, including sales tax, titling and registration fees, safety and emission fees, and waste tire recycling fees.

(ii) In addition to other advertisements, this pertains to price statements such as "$..... Buys".

(iii) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

(iv) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price.

(d) Savings and Discount Claims. Because the intrinsic value of a used motor vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This includes statements such as, "Was priced at $....., now priced at $.....

(i) The word "wholesale" may not be used in retail motor vehicle advertising.

(ii) When a motor vehicle advertisement contains an offer of a discount on a new motor vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the motor vehicle.

(e) Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the motor vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the motor vehicle without making any outlay of money.

(f) Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

(g)(i)(A) Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit, such as "we accept all credit applications", may not be used.

(B) If the amount of the advertised payment changes during the term of the loan, both the payments and the terms of the loan must be disclosed together.

(ii) The phrase "we will pay off your trade no matter what you owe" may not be used.

(h) Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe motor vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed motor vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

(i) Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a current series is advertised, the first line of the advertisement must contain the word "used", "pre-owned", "certified used", "certified pre-owned", or other similar term used to designate a used motor vehicle, or the text must clearly indicate that the motor vehicle offered is used.

(j) Demonstrators, Executives' and Officials' Motor Vehicles.

(i) "Demonstrator" means a motor vehicle that has never been sold or leased to a member of the public.

(ii) Demonstrator motor vehicles include motor vehicles used by new motor vehicle dealers or their personnel for demonstrating performance ability but not motor vehicles purchased or leased by dealers or their personnel and used as their personal motor vehicles.

(iii) A demonstrator motor vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new motor vehicle.

(iv) An executive's or official's motor vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These motor vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

(v) Demonstrator's, executive's and official's motor vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the motor vehicle offered for sale.

(k) Taxi-cabs, Police, Sheriff, and Highway Patrol Motor Vehicles. Taxi-cabs, police, sheriff, and highway patrol motor vehicles shall be so identified. These motor vehicles may not be described by an ambiguous term such as "commercial".

(l) Mileage Statements. When an advertisement quotes the

number of miles or a range of miles a motor vehicle has been driven, the dealer must have written evidence that the motor vehicle has not been operated in excess of the advertised mileage.

(i) The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

(ii) If a dealer chooses to advertise specific mileage or a range of miles a motor vehicle has been driven, the dealer shall upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that motor vehicle so that the mileage can be readily verified.

(m) Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase motor vehicles for less so we can sell them for less", "highest trade-in allowance", "we give $300 more in trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement and shall be produced upon request of a prospective purchaser, peace officer, or employee of the division.

(n) Free. "Free" may be used in advertising only when the advertiser is offering a gift that is not conditional on the purchase of any property or service.

(o) Driving Trial. A free driving trial means that the purchaser may drive the motor vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any motor vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

(p) Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

(q) Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own motor vehicle", and phrases of similar import may not be used.

(r) Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of motor vehicles and transactions shall be made in a clear and conspicuous manner.

(i) Fine print, and mouse print are not acceptable methods of disclosing material facts.

(ii) The disclosure must be made in a typeface and point size comparable to the smallest typeface and point size of the text used throughout the body of the advertisement.

(iii) An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

(iv) The speed of the words spoken in any verbal advertisement must be constant throughout the advertisement.

(s) Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

(i) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the motor vehicle.

(ii) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

(iii) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money is required to lease the motor vehicle.

(iv) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

(v) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

(t) Electronic Medium Disclosures. A disclosure appearing in any electronic advertising medium must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used.

(u) Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

(v) Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

(w) Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the motor vehicle.

(x) Special Status of Dealership. A motor vehicle advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

(y) Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer; however, for example requiring the consumer to bring a written offer made to that consumer by an authorized representative of a dealership on a substantially similar motor vehicle would be considered reasonable.

(z) Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with motor vehicles offered or sold at a bona fide auction.

(aa) Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio, television, or electronic medium advertisements may not convey or permit an erroneous or misleading impression as to which motor vehicle or motor vehicles are offered at featured prices.

(i) When an advertisement contains a picture of a motor vehicle along with a quoted price, the motor vehicle pictured must be a similar model with similar options and accessories as the motor vehicle advertised.

(ii) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

(iii) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

(A) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

(B) in terms that are understandable to the buying public; and

(C) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

(bb) An advertisement must disclose that a vehicle is a salvage vehicle with a branded title or salvage certificate. The disclosure shall be made by inserting the terms "salvage

certificate" or "branded title," as appropriate:

(i) immediately following the year, make, and model of the advertised salvage vehicle; and

(ii) in the same typeface and point size as the typeface and font size used to advertise the year, make, and model of the salvage vehicle.

R877-23V-8. Signs and Identification Pursuant to Utah Code Ann. Section 41-3-105.

(1) Every dealer, dismantler, manufacturer, remanufacturer, transporter, crusher, body shop, and distributor must post a sign at its principal place of business.

(2) The sign required under Subsection (1) shall:

(a) plainly display in a permanent manner the name under which the business is licensed;

(b) be at least 24 square feet in size, unless required otherwise, in writing, by a government entity; and

(c) be painted on the building, attached to the building with nails or bolts, or affixed to posts that have been securely anchored in the ground.

(3) A similar sign must be conspicuously posted at each additional place of business and must show, in addition, the address of the principal place of business. All signs must remain posted at each place of business and on the office. If the office is not located at the site on which the motor vehicles are displayed or offered for sale or exchange, the bonded dealer number, dismantler number, or manufacturer number must also be conspicuously displayed either on the sign or on the building.

(4) If the additional place of business is an auto show or similar business that will conduct business for ten days or less, the sign need only show the licensee's name as licensed by the division and be of a size that reasonably identifies the licensee.

(5) No place of business may be operated under a name other than that by which the licensee is licensed by the division. No sign may be posted at a place of business that shows a business name other than the one licensed by the division or gives the impression that the business is other than the one licensed by the division. However, a sign containing a variation of the licensee's name, if a variation of the licensee's name is required by a manufacturer in writing, may be posted as long as the sign containing the licensed name is more prominent.

(6) Documents submitted by a licensee to a government entity shall be identified only by the name under which the licensee is licensed by the division. All documents used by the licensee to promote or transact a sale or lease of a vehicle shall identify that licensee only by the name under which the licensee is licensed with the division.

R877-23V-10. Uniform Vehicle Identification Numbering System for Licensed Manufacturers Pursuant to Utah Code Ann. Section 41-3-202.

A. Except as provided in subsection (B), all manufacturers of motor vehicles licensed under Section 41-3-202 shall comply with the National Highway Traffic and Safety Administration's Standard No. 115, 49 C.F.R. Section 571.115 (1992), regarding 17-character vehicle identification number (VIN) requirements.

B. Manufacturers involved only in the second stage of a multi-stage vehicle are not required to comply with subsection (A) if the manufacturer of the first stage has complied with subsection (A).

R877-23V-11. License Information Update Pursuant to Utah Code Ann. Section 41-3-201.

A. Every person licensed under Section 41-3-202 shall notify the Motor Vehicle Enforcement Division (division) immediately of any change in ownership, address, or circumstance relating to its fitness to be licensed.

B. The division may request the licensee to review information contained in the division's files and notify the division of any corrections that must be made.

R877-23V-12. Documents Required Prior to Issue of a License Pursuant to Utah Code Ann. Section 41-3-105.

The following items must be properly completed and presented to the division before a license is issued.

(1) New motor vehicle dealer or new motorcycle and small trailer dealer license:

(a) application for license;

(b) dealer bond in the amount prescribed by Section 41-3-205;

(c) evidence that a Utah sales tax license has been issued to the dealership;

(d) franchise verification from the manufacturer of each make of new motor vehicle to be offered for sale;

(e) pictures of the dealership, clearly showing the office, display space, and required sign;

(f) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

(g) the fee required by Section 41-3-601;

(h) evidence that the place of business has been inspected by an authorized division employee or agent;

(i) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

(2) Used motor vehicle dealer or used motorcycle and small trailer dealer license:

(a) application for license;

(b) dealer bond in the amount prescribed by Section 41-3-205;

(c) evidence that a Utah sales tax license has been issued to the dealership;

(d) pictures of the dealership, clearly showing the office, display space, and required sign;

(e) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

(f) the fee required by law;

(g) evidence that the place of business has been inspected by an authorized division employee or agent;

(h) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

(3) Manufacturer or remanufacturer license:

(a) application for license;

(b) evidence that the applicant has complied with the National Highway Traffic and Safety Administration's Motor Vehicle Safety Standard No. 115, regarding 17 character vehicle identification number (VIN) requirements;

(c) pictures of the principal place of business and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that a Utah sales tax license has been issued to the manufacturer or remanufacturer;

(f) evidence that the place of business has been inspected by an authorized division employee or agent.

(4) Transporter license:

(a) application for license;

(b) pictures of the principal place of business and required sign;

(c) the fee required by Section 41-3-601;

(d) if applicable, evidence that a Utah sales tax license has been issued to the transporter;

(e) evidence that the place of business has been inspected by an authorized division employee or agent.

(5) Dismantler license:

(a) application for license;

(b) evidence that a Utah sales tax license has been issued

for the dismantler;

(c) pictures of the principal place of business, clearly showing the office and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that the place of business has been inspected by an authorized division employee or agent.

(6) Crusher license:

(a) application for license;

(b) crusher bond as prescribed in Section 41-3-205;

(c) pictures of the principal place of business, clearly showing the office and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that a Utah sales tax license has been issued for the crusher;

(f) evidence that the place of business has been inspected by an authorized division employee or agent.

(7) Salesperson license:

(a) application for license;

(b) picture of the applicant;

(c) fingerprints of the applicant and the fees and waiver required by the Department of Public Safety for the processing of fingerprints;

(d) the fee required by Section 41-3-601.

(8) Distributor, factory branch, distributor branch, or representative license:

(a) application for license;

(b) the fee required by Section 41-3-601;

(c) pictures of the principal place of business, clearly identifying the office and required sign;

(d) evidence that a Utah sales tax license has been issued for the distributor;

(e) evidence that the place of business has been inspected by a authorized division employee or agent.

(9) Body shop license:

(a) application for license;

(b) body shop bond as prescribed in Section 41-3-205;

(c) pictures of the principal place of business, clearly showing the office and required sign;

(d) the fee required by Section 41-3-601;

(e) evidence that a Utah sales tax license has been issued for the body shop;

(f) evidence that the place of business has been inspected by an authorized division employee or agent.

(10) New applicants may also be required to attend an orientation class on motor vehicle laws and motor vehicle business laws before their license is issued.

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302.

(1) Only fees required by Title 41, Chapter 1a, may be identified as state-mandated fees.

(2) A dealer that charges the purchaser or lessee of a motor vehicle a fee for preparing or processing any state-mandated documents or services ("dealer documentary service fees") must, in addition to the requirements set forth in Subsection (1), prominently display a sign on the dealer premises in a location that is readily discernable by all purchasers and lessees. The sign shall contain the language set forth in Subsection (2)(a).

(a) The (dealer documentary service fee) ( ) as set forth in your contract represents costs and profit to the dealer for preparing and processing documents and other services related to the sale or lease of your vehicle. These fees are not set or state mandated by state statute or rule.

(b) The blank in Subsection (2)(a) may be wording selected by the dealer to describe the fee charged for document preparation and processing and other services, but must be, in all cases, the actual wording used in the dealer's contract of sale or lease agreement.

R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507.

A. A lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter plate may be replaced only after it has expired.

B. The replaced special plate shall be included in the calculation of special plates a dealer may be issued under Section 41-3-503.

R877-23V-18. Qualifications for a Salvage Vehicle Buyer License Pursuant to Utah Code Ann. Section 41-3-202.

A. An applicant for a salvage vehicle buyer license shall provide to the division:

1. evidence that the applicant is licensed in any state as a motor vehicle dealer, dismantler, or body shop;

2. a list of any previous motor vehicle related businesses in which the applicant was involved;

3. evidence that the applicant has business experience in buying, selling, or otherwise working with salvage vehicles;

4. evidence that the applicant understands and complies with statutes and rules relating to the handling and disposal of environmental hazardous materials associated with salvage vehicles under Title 19, Chapter 6, Hazardous Substances; and

5. evidence that the applicant has complied with the provisions of Title 41, Chapter 3, Motor Vehicle Business Regulation Act, or similar laws of another state.

R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209.

(1) Subject to Subsection (2), there is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license under Title 41, Chapter 3 does not include a violation of a state or federal law that otherwise constitutes reasonable cause under Subsection 41-3-209(2) if the licensee or license applicant who has been charged with, found in violation of, or convicted of a state or federal law that constitutes reasonable cause to deny, suspend, or revoke a license under Subsection 41-3-209(2), has

(a)(i) completed any court-ordered probation or parole; or

(ii) met any conditions of a plea in abeyance; and

(b) paid any required criminal restitution and fines.

(2) The division may rebut the presumption under Subsection (1) by presenting evidence to the commission establishing that the license should be denied, suspended, or revoked.

R877-23V-22. Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704.

(1)(a) Reasonable cause to reduce or compromise a penalty imposed by the division under Title 41, Chapter 3 may include a penalty imposed under Section 41-3-702 for a second or subsequent offense that is issued for a violation that occurred before the division notifies the party of the penalty for the initial offense.

(b) A person seeking to reduce or compromise a penalty under Subsection (1)(a) shall:

(i) demonstrate that there is reasonable cause to reduce or compromise the penalty; and

(ii) recommend the amount by which the penalty should be reduced or compromised.

(2) A penalty that is reduced or compromised under Subsection (1) may not be reduced or compromised below the penalty imposed for a first offense for that violation.

(3) Reasonable cause to waive, reduce, or compromise a penalty imposed by the division under Title 41, Chapter 3 does not include:

(a) ignorance of the law; or

(b) inability to pay a penalty imposed.

(4) Nothing in this rule prevents a person from appealing the appropriateness of a penalty imposed by the division under Title 41, Chapter 3.

KEY: taxation, motor vehicles
July 14, 2016 **41-1a-712**
Notice of Continuation January 3, 2012 **41-3-105**
41-3-201
41-3-202
41-3-210
41-3-301
41-3-302
41-3-305
41-3-503
41-3-505
41-3-506
41-3-507

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;
(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net

annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(11)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (11)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (11)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(12) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(13) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(14) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in

Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2016 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing

authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
15	69%
14	40%
13 and prior	10%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
15	88%
14	79%
13	68%
12	57%
11	47%
10	36%
09	24%
08 and prior	12%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
15	83%
14	67%
13	51%
12	34%
11 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks:

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
15	89%
14	81%
13	71%
12	61%
11	53%
10	43%
09	32%
08	22%
07 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2016 percent good applies to 2016 models purchased in 2015.

(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
16	90%
15	71%
14	65%
13	60%
12	54%
11	49%
10	43%
09	38%
08	32%
07	27%
06	21%
05	16%
04	10%
03 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) microscopes; and

(D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
15	91%
14	84%
13	76%
12	68%
11	61%
10	54%
09	45%
08	37%

07	29%
06	20%
05 and prior	11%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(VII) VGO, amine, SWS, and HDS separators and drums;

(VIII) VGO and tank pumps;

(IX) TGU modules; and

(X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
15	91%
14	84%
13	76%
12	68%
11	61%
10	54%
09	45%
08	37%
07	29%
06	20%
05 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
15	92%
14	88%
13	81%
12	75%
11	70%
10	65%
09	57%
08	52%
07	46%
06	40%
05	34%
04	27%
03	19%
02 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad/cam systems; and

(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
15	62%
14	46%
13	21%
12	9%
11 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2016 model equipment purchased in 2015 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
15	49%
14	46%
13	43%
12	41%
11	38%
10	35%
09	33%
08	30%
07	27%

06	24%
05	22%
04	19%
03	16%
02 and prior	14%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2016 percent good applies to 2016 models purchased in 2015.

(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
16	90%
15	71%
14	67%
13	64%
12	60%
11	56%
10	52%
09	49%
08	45%
07	41%
06	38%
05	34%
04	30%
03	26%
02	23%
01	19%
00 and prior	12%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
15	47%
14	34%
13	24%
12	15%
11 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboards;

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators;

(F) bulk storage tanks;

(G) underground fiber optic cable; and

(H) solar panels and supporting equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
15	94%
14	91%
13	86%
12	82%
11	79%
10	76%
09	70%
08	67%
07	64%
06	61%
05	59%
04	55%
03	50%
02	43%
01	36%
00	29%
99	22%
98	15%
97 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2016 percent good applies to 2016 models purchased in 2015.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
16	90%
15	65%
14	62%
13	60%
12	58%

11	56%
10	53%
09	51%
08	49%
07	47%
06	44%
05	42%
04	40%
03	38%
02	35%
01	33%
00	31%
99	29%
98	26%
97	24%
96	20%
95 and prior	16%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

(J) equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
15	92%
14	86%
13	80%
12	73%
11	67%
10	61%
09	53%
08	47%
07	41%
06	35%
05	28%
04	20%
03 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2016 percent good applies to 2016 models purchased in 2015.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
16	95%
15	90%
14	86%
13	81%
12	77%
11	72%
10	68%
09	64%
08	59%
07	55%
06	49%
05	45%
04	39%
03	34%
02	28%
01	23%
00 and prior	16%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;

(B) plumbing and roughed-in fixtures;

(C) floor coverings other than carpet;

(D) store fronts;

(E) decoration;

(F) wiring;

(G) suspended or acoustical ceilings;

(H) heating and cooling systems; and

(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
15	94%
14	88%
13	82%
12	77%
11	71%
10	65%
09	59%
08	54%
07	48%
06	42%
05	36%
04 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges; and

(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
15	84%
14	68%
13	52%
12	36%
11	19%
10 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
15	97%
14	95%
13	92%
12	90%
11	87%
10	84%
09	82%
08	79%
07	77%
06	74%
05	71%
04	69%
03	66%
02	64%
01	61%
00	58%
99	56%
98	53%
97	51%
96	48%
95	45%
94	43%
93	40%
92	38%
91	35%
90	32%
89	30%
88	27%
87	25%
86	22%
85	19%
84	17%
83	14%
82	12%
81 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
15	75%
14	50%
13	25%
12 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2016.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;

(ii) grocery stores;

(iii) apartments;

(iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property,

or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2016 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	789
2)	Cache	681
3)	Carbon	511
4)	Davis	839
5)	Emery	487
6)	Iron	777
7)	Kane	410
8)	Millard	774
9)	Salt Lake	692
10)	Utah	734
11)	Washington	636
12)	Weber	780

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	693
2)	Cache	581
3)	Carbon	407
4)	Davis	738
5)	Duchesne	476
6)	Emery	392
7)	Grand	375
8)	Iron	681
9)	Juab	437
10)	Kane	315
11)	Millard	679
12)	Salt Lake	595
13)	Sanpete	526
14)	Sevier	549
15)	Summit	451
16)	Tooele	440
17)	Utah	635
18)	Wasatch	478
19)	Washington	542
20)	Weber	684

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	554
2)	Box Elder	545
3)	Cache	441
4)	Carbon	269
5)	Davis	593
6)	Duchesne	334
7)	Emery	247
8)	Garfield	206
9)	Grand	237
10)	Iron	541
11)	Juab	294
12)	Kane	174
13)	Millard	537
14)	Morgan	379
15)	Piute	326
16)	Rich	174
17)	Salt Lake	453
18)	San Juan	171
19)	Sanpete	385
20)	Sevier	409
21)	Summit	307
22)	Tooele	295
23)	Uintah	363
24)	Utah	487
25)	Wasatch	332
26)	Washington	398
27)	Wayne	322
28)	Weber	544

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	455
2)	Box Elder	450
3)	Cache	342
4)	Carbon	173
5)	Daggett	185
6)	Davis	496
7)	Duchesne	234
8)	Emery	153
9)	Garfield	111
10)	Grand	143
11)	Iron	442
12)	Juab	195
13)	Kane	79
14)	Millard	437
15)	Morgan	281
16)	Piute	228
17)	Rich	81
18)	Salt Lake	351
19)	San Juan	78
20)	Sanpete	290
21)	Sevier	313
22)	Summit	212
23)	Tooele	201
24)	Uintah	268
25)	Utah	391
26)	Wasatch	237
27)	Washington	300
28)	Wayne	227
29)	Weber	444

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	601
2)	Box Elder	651
3)	Cache	601
4)	Carbon	601
5)	Davis	656
6)	Duchesne	601
7)	Emery	601
8)	Garfield	601
9)	Grand	601
10)	Iron	601
11)	Juab	601
12)	Kane	601
13)	Millard	601
14)	Morgan	601
15)	Piute	601
16)	Salt Lake	601
17)	San Juan	601
18)	Sanpete	601
19)	Sevier	601
20)	Summit	601
21)	Tooele	601
22)	Uintah	601
23)	Utah	661
24)	Wasatch	601
25)	Washington	711
26)	Wayne	601
27)	Weber	656

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	234
2)	Box Elder	252
3)	Cache	261
4)	Carbon	127
5)	Daggett	153
6)	Davis	264
7)	Duchesne	163
8)	Emery	135
9)	Garfield	102
10)	Grand	130
11)	Iron	256
12)	Juab	150
13)	Kane	107
14)	Millard	190
15)	Morgan	193
16)	Piute	187
17)	Rich	103
18)	Salt Lake	222
19)	Sanpete	190
20)	Sevier	195
21)	Summit	198
22)	Tooele	183
23)	Uintah	203
24)	Utah	246
25)	Wasatch	205
26)	Washington	223
27)	Wayne	169
28)	Weber	292

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	51
2)	Box Elder	92
3)	Cache	117
4)	Carbon	48
5)	Davis	51
6)	Duchesne	53
7)	Garfield	47
8)	Grand	48
9)	Iron	48
10)	Juab	50
11)	Kane	47
12)	Millard	46
13)	Morgan	63
14)	Rich	47
15)	Salt Lake	53
16)	San Juan	52
17)	Sanpete	53
18)	Summit	47
19)	Tooele	51
20)	Uintah	53
21)	Utah	49
22)	Wasatch	47
23)	Washington	47
24)	Weber	76

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	15
2)	Box Elder	58
3)	Cache	82
4)	Carbon	15
5)	Davis	16
6)	Duchesne	19
7)	Garfield	15
8)	Grand	15
9)	Iron	15
10)	Juab	16
11)	Kane	15
12)	Millard	14
13)	Morgan	28
14)	Rich	15
15)	Salt Lake	15
16)	San Juan	17
17)	Sanpete	19
18)	Summit	15
19)	Tooele	14
20)	Uintah	19
21)	Utah	16
22)	Wasatch	15
23)	Washington	14
24)	Weber	44

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	70
2)	Box Elder	74
3)	Cache	70
4)	Carbon	51
5)	Daggett	51
6)	Davis	60
7)	Duchesne	68
8)	Emery	70
9)	Garfield	75
10)	Grand	76
11)	Iron	73
12)	Juab	64
13)	Kane	74
14)	Millard	75
15)	Morgan	66
16)	Piute	89
17)	Rich	64
18)	Salt Lake	68
19)	San Juan	74
20)	Sanpete	62
21)	Sevier	63
22)	Summit	71
23)	Tooele	70
24)	Uintah	79
25)	Utah	65
26)	Wasatch	52
27)	Washington	64
28)	Wayne	87
29)	Weber	68

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	22
2)	Box Elder	23
3)	Cache	23
4)	Carbon	15
5)	Daggett	14
6)	Davis	19
7)	Duchesne	22
8)	Emery	21
9)	Garfield	23
10)	Grand	22
11)	Iron	22
12)	Juab	19
13)	Kane	24
14)	Millard	24
15)	Morgan	21
16)	Piute	26
17)	Rich	20
18)	Salt Lake	21
19)	San Juan	24
20)	Sanpete	18
21)	Sevier	18
22)	Summit	20
23)	Tooele	20
24)	Uintah	28
25)	Utah	23
26)	Wasatch	17
27)	Washington	21
28)	Wayne	28
29)	Weber	20

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	16
2)	Box Elder	17
3)	Cache	15
4)	Carbon	12
5)	Daggett	11
6)	Davis	12
7)	Duchesne	13
8)	Emery	14
9)	Garfield	16
10)	Grand	15
11)	Iron	15
12)	Juab	13
13)	Kane	15
14)	Millard	16
15)	Morgan	13
16)	Piute	18
17)	Rich	13
18)	Salt Lake	14
19)	San Juan	16
20)	Sanpete	13
21)	Sevier	13
22)	Summit	14
23)	Tooele	13
24)	Uintah	19
25)	Utah	13
26)	Wasatch	12
27)	Washington	13
28)	Wayne	18
29)	Weber	14

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6

2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax

Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State

Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be

considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

[((9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was

capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals
July 14, 2016 **Art. XIII, Sec 2**
Notice of Continuation January 3, 2012 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R907. Transportation, Administration.
R907-69. Records Access.
R907-69-1. Purpose and Authority.

This rule provides information about where and to whom to direct requests for access to records of the Utah Department of Transportation (UDOT) under the Government Records Access and Management Act. This rule is authorized by Section 63G-2-204(2)(d).

R907-69-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Coordinator
Utah Department of Transportation
Calvin Rampton Complex, 2nd Floor
4501 South 2700 West
Salt Lake City, Utah 84119

(If by mail)

GRAMA Coordinator
Utah Department of Transportation
P.O. Box 148430
Salt Lake City, Utah 84114-8430

(If by email)

GRAMA Coordinator
grama@utah.gov

(If by fax)

GRAMA Coordinator
801-965-4838

R907-69-3. Request Form.

A request for public information form is available on the UDOT website at: www.udot.gov/main/uconowner.gf?n=7060323128709256.

R907-69-4. Appeals.

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

TABLE

(If by hand delivery)

GRAMA Appeal
UDOT Executive Director
Calvin Rampton Complex, 1st Floor
4501 South 2700 West
Salt Lake City, Utah 84119

(If by mail)

GRAMA Appeal
UDOT Executive Director
P.O. Box 141265
Salt Lake City, Utah 84114-1265

(If by email)

GRAMA Appeal
UDOT Executive Director
UDOTExecDir@utah.gov

(If by Fax)

GRAMA Appeal
UDOT Executive Director
801-965-4338

KEY: public records, government documents, records access, GRAMA
March 12, 2012 63G-2-204
Notice of Continuation July 7, 2016

R916. Transportation, Operations, Construction.
R916-1. Advertising and Awarding Construction Contracts.
R916-1-1. Authority and Purpose.

This rule establishes the procedures for the advertising and awarding of Utah Department of Transportation construction contracts. This rule is authorized under Sections 72-1-201, 72-6-107, 63G-6-505, and Subsection 63G-6-207(3).

R916-1-2. Definitions.

(1) Terms used in this rule are defined in Section 72-1-102.

(2) In addition, "Notice to Contractors" means the advertisement or public announcement inviting bids for work to be performed or materials to be furnished.

R916-1-3. Invitation for Bids.

(1) The department shall prepare a notice to contractors inviting bid proposals on each project. The notice to contractors shall specify the type of construction, the location, the principal items of work, and the bid opening time and date.

(2) The advertisement for bids shall be published pursuant to the requirements of Section 72-6-107(2)(c)(i).

(3) Contractors and suppliers may receive notice to contractors by requesting their name be placed on a distribution list which is maintained by the department.

R916-1-4. Bidding Proposals, Plans and Specifications.

(1) Bidding proposals, plans and specifications shall be available for inspection at all Region offices, Cedar City, Price, Richfield and Salt Lake City headquarters. Plans are available for download at the department's website, www.udot.utah.gov.

(2) Prior to submitting a bid, the bidder must become prequalified at least 10 working days prior to bid opening date, under Rule R916-2 concerning prequalification of contractors. Prequalification of bidders is not required on projects estimated under $1,500,000.

(3) Prequalified contractors may obtain bidding proposals, plans and specifications and non-prequalified contractors may obtain non-bidding plans and specifications from the department's website, www.udot.utah.gov.

(a) Projects shall not be awarded when the sum of the amount of uncompleted work, both in and outside of the state of Utah, shown on the contractor's "Status of Work Under Contract" form and the bid amount submitted exceeds the amount for which the contractor is prequalified. This calculation is performed at the close of bid opening for all apparent low bidders, on all projects with an advertised engineer's estimate over $1,500,000. This process does not apply to contractors who are prequalified as "unlimited."

(b) Two or more contractors who have prequalified separately and desire to enter a joint bid on a single project may do so upon submitting a letter of intent to the department prequalification secretary at least four working days prior to bid opening. The prequalification of each contractor can then be considered for consolidation to place a bid as prime.

(4) If it is necessary to issue an addendum to the plans and specifications during the advertising period, the contractors and suppliers listed on the planholders list will be faxed and e-mailed a copy of the addendum by the department.

R916-1-5. Bidding Requirements and Conditions.

(1) Each bidder shall submit their proposal upon the forms furnished by the department.

(2) Sealed proposals shall be submitted to the department prior to the time and at the place specified in the notice to contractors.

(3) Proposals shall be publicly opened and read at the time and place indicated in the notice to contractors.

(4) No proposal shall be considered unless accompanied by a guaranty in the form of certified check, cashier's check or guaranty bond for not less than five percent of the total amount of the bid.

(5) Each bidder must comply with the laws of Utah relative to the licensing of contractors. A contractor's license is required prior to the submission of a bid, except that a contractor may submit a bid on a Federal-aid highway project without having first obtained a license, provided the contractor, prior to undertaking any construction under that bid (at time of official award notification), shall be licensed in Utah.

(6) The department reserves the right to reject any or all bid proposals.

R916-1-6. Award of Contracts.

(1) The department shall award the contract to the lowest responsible and qualified bidder.

(2) When all bids received exceed the engineer's estimate by more than 10%, the department reserves the right to either accept the low bid or to reject all bids.

(3) The award, if made, shall be within 30 days after the opening of proposals. The department may, subject to approval of the successful bidder, withhold the award beyond the 30 day time frame. After 30 days, if no award has been made, the contractor may withdraw their proposal without liability.

(4) The successful bidder shall be notified, by mail using the address shown on their proposal, that they have been awarded the contract.

(5) The department reserves the right to cancel the award of any contract at any time before the execution of the contract by all parties with no liability against the department.

R916-1-7. Execution of Contracts.

(1) Unless the bonds are waived pursuant to Subparagraph (6), when the contract is executed, the successful bidder shall furnish a performance bond and a payment bond, each in a sum equal to the full amount of the contract. Each bond shall be on the form provided by the department and shall be executed by a surety company or companies licensed by the state of Utah. These companies must be listed on the current United States Department of the Treasury Circular 570 as acceptable sureties on Federal bonds. The United States Department of the Treasury Circular 570 is available on the internet at www.fms.treas.gov/c570/c570.html.

(2) The contract shall be signed by the successful bidder and returned together with the fully executed contract bonds and appropriate insurance documents within 15 days after the contract has been awarded.

(3) Failure to execute a contract and file acceptable bonds and appropriate insurance documents within 15 days after the contract has been awarded shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty.

(4) If the contract is not executed by the Department within 30 days after receiving signed contracts, bonds, and insurance documentation, the bidder shall have the right to withdraw their bid without penalty.

(5) No contract shall be considered effective until it has been fully executed by all the parties thereto.

(6) In accordance with Section 63G-6-505, the Executive Director or designee may reduce or waive the amount of the payment and performance bonds below the 100% normally required, if he or she determines that the circumstances are such that the normal bonding requirement is unnecessary to protect the State.

KEY: bids, advertising, contracts, bonding requirements

October 11, 2011	**72-1-201**
Notice of Continuation July 28, 2016	**72-6-107**
	63G-6-505

63G-6-207(3)