

**R15. Administrative Services, Administrative Rules (Office of).****R15-1. Administrative Rule Hearings.****R15-1-1. Authority.**

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63G-3-402(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

**R15-1-2. Definitions.**

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) In addition:

(a) "coordinator" means the coordinator of the Office of Administrative Rules;

(b) "hearing" means an administrative rule hearing; and

(c) "officer" means an administrative rule hearing officer.

**R15-1-3. Purpose.**

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

**R15-1-4. When Agencies Hold Hearings.**

(1) Agencies shall hold hearings as required by Subsection 63G-3-302(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63G, Chapter 3, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63G-3-601.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63G-3-301(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

**R15-1-5. Hearing Procedures.**

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63G-3-302 or 63G-3-601, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and

place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) If a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

**R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.**

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the coordinator as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The coordinator shall reply to the agency head as provided in Subsection R15-5-6(2). The coordinator's decision shall be included in the hearing record.

**R15-1-9. Appeal and Judicial Review.**

(1) Persons may appeal the decision of the agency head or the coordinator by petitioning the district court for judicial review as provided by law.

**KEY: administrative law, government hearings**

June 1, 1996

Notice of Continuation September 11, 2015

63G-3-402

**R15. Administrative Services, Administrative Rules (Office of).**

December 25, 2006

63G-3-601

**R15-2. Public Petitioning for Rulemaking.**

Notice of Continuation September 11, 2015

**R15-2-1. Authority.**

As required by Subsection 63G-3-601(3), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

**R15-2-2. Definitions.**

- (1) Terms used in this rule are defined in Section 63G-3-102.
- (2) Other terms are defined as follows:
  - (a) "rule change" means:
    - (i) making a new rule;
    - (ii) amending, repealing, or repealing and reenacting an existing rule;
    - (iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63G-3-303;
    - (iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
    - (v) any combination of the above.
  - (b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63G-3-601 and this rule.

**R15-2-3. Petition Procedure.**

- (1) The petitioner shall send the petition to the head of the agency authorized by law to make the rule change requested.
- (2) The agency receiving the petition shall record the date it received the petition.

**R15-2-4. Petition Form.**

- The petition shall:
- (a) be clearly designated "petition for a rule change";
  - (b) state the petitioner's name;
  - (c) state the petitioner's interest in the rule, including relevant affiliation, if any;
  - (d) include a statement as required by Subsection 63G-3-601(4) regarding the requested rule change;
  - (e) state the approximate wording of the requested rule change;
  - (f) describe the reason for the rule change;
  - (g) include an address, an e-mail address when available, and telephone where the petitioner can be reached during regular business hours; and
  - (h) be signed by the petitioner.

**R15-2-5. Petition Consideration and Disposition.**

- (1) The agency head or designee shall:
  - (a) review and consider the petition;
  - (b) write a response to the petition stating:
    - (i) that the petition is denied and reasons for denial; or
    - (ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
  - (c) send the response to the petitioner within the time frame provided by Section 63G-3-601.
- (2) The petitioned agency may, within the time frame provided by Section 63G-3-601, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgment, deems necessary to provide the petition due consideration.
- (3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.
- (4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

**KEY: administrative law, open government, transparency**

**R15. Administrative Services, Administrative Rules (Office of).**

statutory provision that explicitly mandates rulemaking.

**R15-3. Administrative Rules: Scope, Content, and When Required.**

**KEY: administrative law**

**April 30, 2007**

**63G-3-201**

**R15-3-1. Authority, Purpose, and Definitions.**

**Notice of Continuation September 11, 2015**

**63G-3-301**

(1) This rule is authorized under Subsection 63G-3-402(1) and (2).

**63G-3-402**

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63G-3-102.

**R15-3-2. Agency Discretion.**

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63G-3-201(2).

(4) Within the limits prescribed by Sections 63G-3-201 and 63G-3-602, an agency has full discretion regarding the substantive content of its rules. The office has authority over nonsubstantive content under Subsections 63G-3-402(3) and (4), and 63G-3-403(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

**R15-3-3. Use of Incorporation by Reference in Rules.**

(1) An agency incorporating materials by reference as permitted under Subsection 63G-3-201(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63G-3-201(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when providing the office a copy of material incorporated by reference.

**R15-3-4. Computer-Prohibited Material.**

(1) All rules shall be in a format that permits their compatibility with the office's computer system and compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The office shall issue and provide to agencies instructions and standards for formatting rules.

**R15-3-5. Statutory Provisions that Require Rulemaking Pursuant to Subsection 63G-3-301(13).**

For the purposes of Subsection 63G-3-301(13), the phrase "statutory provision that requires the rulemaking" means a state

**R15. Administrative Services, Administrative Rules (Office of).****R15-4. Administrative Rulemaking Procedures.****R15-4-1. Authority and Purpose.**

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(2).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

**R15-4-2. Definitions.**

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the office the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(e);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(4)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Coordinator" means the coordinator of the Office of Administrative Rules;

(f) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(g) "eRules" means the administrative rule filing application that agencies use to file rules and notices;

(h) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(i) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(4)(b).

**R15-4-3. Publication Dates and Deadlines.**

(1) For the purposes of Subsections 63G-3-301(4) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each

month.

**R15-4-4. Thirty-Day Comment Period for a Proposed Rule and a Change in Proposed Rule.**

(1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

**R15-4-5a. Notice of the Effective Date for a Proposed Rule.**

(1)(a) Pursuant to Subsection 63G-3-301(12), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the office of the date the rule is to become effective and enforceable.

(b) The agency shall notify the office after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the office of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the office by filing with the office a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the office by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the office or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The office shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

**R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.**

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the office of the date the rule is to become effective and enforceable.

(b) The agency shall notify the office after determining that the rule text as published is the final form of the rule, and after informing the office of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the office by filing with the office a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the office by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the office or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least

seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a subsequent notice in the bulletin.

(4) The office shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

#### **R15-4-6. Nonsubstantive Changes in Rules.**

(1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the attorney general or the office, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective; or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the office by filing with the office the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the office makes the change in the Utah Administrative Code.

(6) The office shall record the nonsubstantive change and its effective date in the administrative rules register.

#### **R15-4-7. Substantive Changes in Proposed Rules.**

(1) Pursuant to Section 63G-3-303, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63G-3-102(20);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63G-3-301(12) and Section R15-4-5a.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the office:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published.

(3) The office shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The office may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5b, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

#### **R15-4-8. Temporary 120-Day Rules.**

(1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).

(a) The office interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the office unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the office, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

#### **R15-4-9. Underscoring and Striking Out.**

(1) (a) Pursuant to Subsection 63G-3-301(4)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63G-3-301(4)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) The struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The office shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the coordinator may refuse to codify the change. When determining whether or not to codify an unmarked change, the coordinator shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The coordinator's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with

regular rulemaking procedures to make the change.

**R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.**

(1) Pursuant to Subsections 63G-3-301(8)(d), 63G-3-303(1)(a), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the office may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the office refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the office has refused to register and publish the rule or change;

(b) identify the reason or reasons why the office refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the bulletin.

**KEY: administrative law**

**August 24, 2007**

**Notice of Continuation September 11, 2015**

**63G-3-301**

**63G-3-303**

**63G-3-304**

**63G-3-402**

**R15. Administrative Services, Administrative Rules (Office of).**

**R15-5. Administrative Rules Adjudicative Proceedings.**

**R15-5-1. Purpose.**

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the office not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the office whether an agency rule meets the procedural requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

**R15-5-2. Authority.**

This rule is required by Sections 63G-4-202 and 63G-4-203, and is enacted under the authority of Subsection 63G-3-402(1)(m) and Sections 63G-4-202, 63G-4-203, and 63G-4-503.

**R15-5-3. Definitions.**

(1) The terms used in this rule are defined in Section 63G-4-103.

(2) In addition:

(a) "coordinator" means the coordinator of the Office of Administrative Rules; and

(b) "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63G-3-402(1)(f).

**R15-5-4. Refusal to Publish or Register a Rule or Rule Change.**

(1) The office shall not publish a proposed rule or rule change when the office determines the agency has not met the requirements of Title 63G, Chapter 3, or of Rules R15-3 or R15-4.

(2) The office shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63G-3-301(6)(a) as interpreted in Section R15-4-5.

(3) The office shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

**R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.**

(1) An agency may request a review of an office refusal to publish or register a rule or rule change by filing a written petition for review with the coordinator.

(2) The coordinator shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the coordinator by filing a written appeal to the executive director of the Department of Administrative Services within 20 days of receipt of the coordinator's decision. The executive director shall respond within 20 days affirming or reversing the coordinator's decision.

**R15-5-6. Determining the Procedural Validity of a Rule.**

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63G, Chapter 3, by filing a written petition with the office.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the office within the two-year limit set by Section 63G-3-603.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the office should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The office shall respond to the petition in writing within 20 days of its receipt.

(a) The office shall research all records pertaining to the rule or rule change at issue.

(b) The response of the office shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The office shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the office's findings by filing a written request for reconsideration with the coordinator.

(a) The coordinator may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

**R15-5-7. Remedies Resulting from an Adjudicative Proceeding.**

(1) A rule the office determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The office shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the office determines is procedurally valid shall be published and registered promptly.

**KEY: administrative procedures, administrative law**  
**June 1, 1996** 63G-3-402  
**Notice of Continuation September 11, 2015** 63G-4-202  
 63G-4-203  
 63G-4-503

**R17. Administrative Services, Archives and Records Service.****R17-9. Electronic Participation at Meetings.****R17-9-1. Authority and Purpose.**

In accordance with Section 52-4-207, this rule establishes a procedure for electronic participation at meetings.

**R17-9-2. Electronic Participation at Meetings.**

(1) Electronic participation at meetings. The following provisions govern any meeting at which one or more members of the Board appears telephonically or electronically pursuant to Utah Code Section 52-4-207.

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

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

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

**KEY: electronic participation, telephonic participation, USHRAB board meetings, anchor location**  
**January 30, 2012** **52-4-207**  
**Notice of Continuation November 30, 2016**

**R23. Administrative Services, Facilities Construction and Management.****R23-32. Rules of Procedure for Conduct of Utah State Building Board Meetings.****R23-32-1. Purpose.**

The purpose of this Rule R23-32 is to establish procedures for the conduct of Utah State Building Board meetings and to assist the public and anyone wishing to address the Building Board, whether in person or by other established means.

**R23-32-2. Authority.**

This Rule R23-32 is authorized under Subsection 63A-5-102(2) which directs that the Building Board "adopt rules of procedure for the conduct of its meetings." The Building Board has administrative rulemaking authority under Subsection 63A-5-103(1)(e).

**R23-32-3. Definitions.**

(1) "Attendance" means that person attending a Board meeting, either in person or through electronic means as authorized by this Rule.

(2) "Board" means the Utah State Building Board established under Title 63A, Chapter 5, Utah Code.

(3) "Chair" means the person appointed as Chair of the Board by the Governor pursuant to Title 63A, Chapter 5, Utah Code.

(4) "Director" means the Director of the Division of Facilities Construction and Management or duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management.

(6) "Electronic meeting" is as defined in Section 52-4-103.

(7) "GOPB Official" means the Director of the Governor's Office of Planning and Budget or duly authorized designee.

(8) "Open and Public Meetings Laws" means those laws provided by Title 52, Chapter 4, Utah Code.

(9) "Presiding Officer" means the Chair. The Chair may choose, either because of unavailability or other reason, an alternate Presiding Officer.

**R23-32-4. Composition of Board.**

(1) The Board consists of eight members, seven of whom are voting members appointed by the Governor for terms of four years.

(2) The GOPB Official is a nonvoting member of the Board. As a nonvoting member, the GOPB official shall not be considered as part of the quorum requirement for Board determinations. The GOPB Official shall advise the Presiding Officer of any designee appointed prior to any meeting that the designee will be attending.

**R23-32-5. Calling for Meetings.**

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services, Director or GOPB Official may also call for a meeting upon consent of the Chair.

**R23-32-6. Compliance with Open and Public Meeting Laws.**

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings Laws. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meeting Laws.

**R23-32-7. Presiding Officer and Basic Responsibilities.**

(1) The Chair shall be the Presiding Officer at all Board meetings when present in person or through electronic means.

(2) The Chair may choose, either because of unavailability or other reason, an alternate Presiding Officer.

(3) The Presiding Officer shall be able to make motions

and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting.

**R23-32-8. Administrative and Staff Services.**

The Department of Administrative Services shall provide administrative and staff services to enable the Board to exercise its powers and discharge its duties, and shall provide necessary space and equipment for the Board.

**R23-32-9. Meetings.**

Meetings shall generally be held on the first Wednesday of the month at 9:00 a.m. at the Utah State Capitol in Salt Lake City, Utah. During Legislative Sessions, the Chair and Director may determine another location. The date, time and location may also be modified by the Chair and Director at any time when it is in the interest of the Board and the public.

**R23-32-10. Notice and Agenda.**

(1) Notice shall be given of all meetings in accordance with the Open and Public Meeting Laws.

(2) The Director and Presiding Officer shall confer a reasonable time prior to any Board meeting as to the items to be on the agenda. The Presiding Officer shall ultimately determine the matters to be on the agenda, unless a vote of the Board has been undertaken to direct an item to be placed on the agenda. Board members may also contact the Chair about any request for agenda items.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons that may have intended to attend the meeting.

(4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer.

(5) Each agenda shall have an item on it regarding whether there are any matters to be placed on a future agenda.

**R23-32-11. Attendance, Quorum and Voting.**

(1) The quorum requirement for the Board is set forth in Utah Code Annotated Title 63A, Chapter 5.

(2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least three members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the specific members of such votes shall be recorded by the Secretary.

(4) Members must be in attendance, including by electronic means in accordance with this Rule, in order to vote.

**R23-32-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.**

(1) The GOPB Official may make and second motions, but shall not vote on any motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall

ask for discussion of the matter. The Presiding Officer shall call upon those that request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion that assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions as are appropriate under their authority.

**R23-32-13. Committees.**

The Board may appoint committees to investigate or report on any matter which is of concern to the Board.

**R23-32-14. Order at Meetings.**

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to be ejected from the meeting.

**R23-32-15. Robert's Rules of Order.**

All matters not covered by this Rule R23-32 shall be determined by either Robert's Rules of Order, latest published edition, an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or with abbreviated procedures as determined by the Presiding Officer.

**R23-32-16. Electronic Meetings.**

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R23-32-15 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) If one or more members of the Board desire to participate electronically, such member(s) shall contact the Director. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Laws.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.

(d) When notice is given of the possibility of a Board member appearing electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are appearing electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

(f) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

**R23-32-17. Suspension of the Rules.**

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R23-32 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

**KEY: Building Board, conduct, meeting procedures  
December 11, 2015 63A-5-102(2)  
Notice of Continuation November 3, 2016 63A-5-103(1)(e)**

**R25. Administrative Services, Finance.**

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

**R25-7-1. Purpose.**

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

**R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

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

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

**R25-7-3. Definitions.**

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

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

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

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

(5) "Home-Base" means the location the employee leaves from and/or returns to.

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

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

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

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

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

**R25-7-4. Eligible Expenses.**

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

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

**R25-7-5. Approvals.**

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

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

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

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

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be

eligible for a meal reimbursement.

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

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

(a) The daily travel meal allowance for in-state travel is \$41.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$17.00
Total	\$41.00

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$66 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$57 per day.

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

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

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to \$51.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to \$46.

(iii) If dinner is provided deduct \$31, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$44.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$40.

(iii) If dinner is provided deduct \$27, leaving a premium allowance for breakfast and lunch of actual up to \$30.

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

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D In-State	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
\$41.00	\$31.00	\$17.00	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

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

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-5:59 *no meals In-State	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
\$0	\$10.00	\$24.00	\$41.00
Out-of-State \$0	\$10.00	\$24.00	\$46.00

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

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the

Department Director or designee.

**R25-7-7. Meals for Statutory Non-Salaried State Boards.**

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

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

**R25-7-8. Reimbursement for Lodging.**

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

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$90.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Green River	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$85.00 plus tax and mandatory fees
Layton	\$85.00 plus tax and mandatory fees
Logan	\$85.00 plus tax and mandatory fees
Moab	\$100.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	\$85.00 plus tax and mandatory fees
Park City/Midway	\$100.00 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area	\$85.00 plus tax and mandatory fees

(Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/Hurricane	\$85.00 plus tax and mandatory fees
Torrey	\$85.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form

FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

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

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

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

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

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

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

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

**R25-7-9. Reimbursement for Incidentals.**

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

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

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

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

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

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

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

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant, with a state purchase card, or with a state travel card.

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

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

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

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

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

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

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

(d) More than thirty days - start over

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

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

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

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

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

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

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

#### **R25-7-10. Reimbursement for Transportation.**

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

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

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

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

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

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

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

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

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reimbursement will be made at 54 cents per mile.

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

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

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

**KEY: air travel, per diem allowances, state employees, transportation**

**August 22, 2016**

**Notice of Continuation April 15, 2013**

**63A-3-107**

**63A-3-106**

**R131. Capitol Preservation Board (State), Administration.**  
**R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.**

**R131-13-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

**R131-13-2. Authority.**

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

**R131-13-3. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63C-9-403.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "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.

(d) "State" means the state of Utah.

**R131-13-4. Applicability of Rule.**

(1) Except as provided in Subsection R131-13-4(2) or R131-13-4(3) below, R131-13 applies to all design or construction contracts entered into by the Board or the executive director, on behalf of the Board, on or after July 1, 2009, 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) Rule R131-13 does not apply if:

(a) the application of this Rule R131-13 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 R131-13 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 R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

**R131-13-5. Contractor and Subcontractors to Comply with Section 63C-9-403.**

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

(2) If a subcontractor of the contractor is subject to Section 63C-9-403(2) or Rule R131-13-4, 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 executive 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.

**R131-13-6. 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 R131-13 or Section 63C-9-403:

(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.

**R131-13-7. 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 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. A Contractor (including Design Professional) shall demonstrate compliance with Section 63C-9-403(5) (a) or (b) at the time of execution of each initial contract described in Section 63C-9-403(2).

(a) The compliance is subject to an audit by the Department (Capitol Preservation Board) or the Office of the Legislative Auditor General.

(b) A Contractor (including Design Professional) subject to Section 63C-9-403(2) shall demonstrate to the executive 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 the executive director. The form shall also require compliance with R131-13-5(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 executive director 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 R131-13-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 63C-9-403(1)(c) 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 days from the date of hire.

(4) Any contract subject to this Rule R131-13 shall contain a provision requiring compliance with this Rule R131-13 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 R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a

suspension or debarment.

(b) Penalties that may be imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Subsections (2) through (9) of 63C-9-403 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% of the amount necessary to purchase qualified health insurance coverage for an employee and 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 63C-9-403 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 Rule R131-13-7(5)(c)(i) as provided in Subsection 63C-9-403(7)(a)(ii). An employee has a private right of action only against the employee's employer to enforce the provisions of Subsection 63C-9-403(7).

**R131-13-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.**

Nothing in Rule R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.

**KEY: health insurance, contractors, contracts**

**November 21, 2016**

**63C-9-403**

**Notice of Continuation May 1, 2014**

**63C-9-301(3)(a)**

**R151. Commerce, Administration.****R151-3. Americans With Disabilities Act Rule.****R151-3-1. Authority and Purpose.**

(1) This rule is made under Section 13-1-6 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Commerce, as a public entity that employs more than 50 persons, adopts and publishes these procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act (ADA), as amended.

(2) This rule implements 28 CFR 35 which implements Title II of the ADA, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department, because of a disability.

**R151-3-2. Procedures.**

Any complaints for noncompliance with Title II of the ADA shall be governed by the procedures set forth in Sections R13-3-2 through 8, as adopted by the Utah Department of Administrative Services and its Division of Risk Management.

**KEY: disabilities, complaints, grievances**

**June 21, 2011**

**13-1-6**

**Notice of Continuation November 3, 2016 63G-3-201(2)**

**R151. Commerce, Administration.****R151-35. Powersport Vehicle Franchise Act Rule.****R151-35-1. Title.**

This rule shall be known as the "Powersport Vehicle Franchise Act Rule".

**R151-35-2. Authority - Purpose.**

In accordance with the Powersport Vehicle Franchise Act, Title 13, Chapter 35, this rule governs adjudicative proceedings before the Utah Powersport Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce, and is adopted under the authority of Subsection 13-35-104(2).

**R151-35-3. Adjudicative Proceedings.**

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Utah Administrative Procedures Act, any adjudicative proceedings under the Powersport Vehicle Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-4.

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63G-4-103(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the Powersport Vehicle Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Powersport Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63G-4-201(2). A request to commence an adjudicative proceeding pursuant to Section 13-35-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH POWERSPORT VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63G-4-201(3), and the Department of Commerce Administrative Procedures Act Rule, R151-4-201 to -205.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63G-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

**R151-35-4. Registration.**

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Department.

(2) Annual Renewals. The Department shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Department as its initial or renewal registration or may submit a registration or renewal request in another format so long as that request contains the following information:

- (a) Name of dealership/manufacturer;
- (b) Address of dealership/manufacturer;
- (c) Owners or stockholders and percentage of holding (5% or above only);
- (d) Line-makes manufactured, distributed, or sold;
- (e) If applicable, dealer number; and
- (f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the Powersport Vehicle Franchise Act.

(4) The processing of an application for registration by the Department may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

**KEY: motorcycles, powersport vehicles, off road vehicles, franchises**

**May 2, 2006**

**13-35-101 et seq.**

**Notice of Continuation November 3, 2016**

**R152. Commerce, Consumer Protection.**

**R152-6. Utah Administrative Procedures Act Rules.**

**R152-6-1. Designation of Adjudicative Proceedings.**

A. All adjudicative proceedings within the Division shall be informal.

B. No hearing will be held unless specifically allowed or required under any laws administered by the Division, or by the Utah Administrative Procedures Act. If a hearing is allowed, it will be held only if timely requested pursuant to Department Rule 151-46b-10.

**R152-6-2. Designation of Presiding Officer.**

The presiding officer in any proceeding shall be the director of the division. The director may designate another person to act as presiding officer in any proceeding or portion thereof.

**KEY: administrative procedure, government hearings, consumer protection**

1992

13-2-5(1)

Notice of Continuation December 1, 2016

**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 files 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**

**Notice of Continuation December 1, 2016**

**13-15-3**

**13-2-5**

**R152. Commerce, Consumer Protection.****R152-20. New Motor Vehicle Warranties.****R152-20-1. Authority and Purpose.**

These rules are promulgated to prescribe for the administration of Title 13, Chapter 20, the New Motor Vehicle Warranties Act (hereinafter the "Act"), and are under the authority granted the Division under Section 13-2-5.

**R152-20-2. Definitions.**

A. For purposes of determining whether a nonconformity has been subject to repair the required number of times, an "attempt" to repair, as used in Section 13-20-4 or 13-20-5, means that the vehicle is or has been presented to the manufacturer or its agent for the same non-conformity.

B. "Collateral charges" as used in Section 13-20-4 includes, but is not limited to:

1. Sales taxes
2. Document preparation fees
3. The cost of additional warranties or extended warranties, if included in the purchase price

C. "Comparable new motor vehicle" as used in Section 13-20-4 means:

1. A motor vehicle that is determined by the division to be identical to, or reasonably equivalent to, the nonconforming vehicle had it conformed to all applicable express warranties. A comparable new motor vehicle includes any service contracts, contract options, and factory or dealer installed options that were originally included in the sale of the nonconforming vehicle; or

2. A vehicle with an equivalent retail value including any service contracts, and factory or dealer installed options that were originally included with the nonconforming vehicle, if the consumer consents to a different make or model.

D. "New motor vehicle" as used in Section 13-20-4 means a motor vehicle which has never been titled or registered and has been driven fewer than 7,500 miles.

E. "Nonconforming vehicle" as used in Section 13-20-4 means a motor vehicle that does not meet all express warranties provided in the sales agreement or contract.

F. "Purchase price" as used in Section 13-20-4 means the actual amount paid for the vehicle. "Purchase price" includes taxes, licensing fees, and additional warranty fees, but does not include collateral charges.

G. "Reasonable allowance" as used in Section 13-20-4 for mileage means the dollar value based on the prescribed deduction per mile. The cap on a reasonable allowance shall be calculated as the purchase price divided by 100,000, but shall not in any case be less than ten (10) cents per mile nor more than twenty-one (21) cents per mile. The consumer shall not be liable for mileage on the vehicle at the time of delivery, nor for mileage during the time the vehicle was being repaired.

**R152-20-3. Replacement or Refund of Nonconforming Motor Vehicles.**

A. When the manufacturer is repurchasing a nonconforming motor vehicle that has been leased to a consumer, the following provisions also apply:

1. The manufacturer shall refund to the lessor all payments made under the lease.
2. The refund or repurchase price shall include trade-in value, inception payment, and security deposit.
3. The manufacturer shall make all payments on behalf of the lessee, to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle. The excess from said payments shall be paid to lessee. Upon the lessor's and/or lienholder's receipt of the payment, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

B. If a manufacturer is unable to provide a comparable new motor vehicle, it may provide, upon the consent of the

consumer, a replacement vehicle of comparable quality. The customer shall not incur additional expense with respect to the replacement vehicle, except as a reasonable allowance for use of the buy-back vehicle.

**KEY: automobiles, automobile repair, consumer protection, motor vehicles**

**March 20, 2007**

**Notice of Continuation December 1, 2016**

**63G-3-201**

**13-2-5**

**13-20-1**

**R152. Commerce, Consumer Protection.****R152-22. Charitable Solicitations Act.****R152-22-1. Authority.**

These rules are promulgated under Section 13-2-5(1) to facilitate the orderly administration of the Charitable Solicitations Act (hereafter, "the Act"), Title 13, Chapter 22.

**R152-22-2. Definitions. Clarifications.**

(1) The definitions set forth in Section 13-22-2 are incorporated herein.

(2) In addition the following definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Parent foundation" or "Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the parent charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws. For purposes of registration under Section 13-22-5 a parent foundation or organization is deemed to be soliciting, requesting, promoting, advertising, or sponsoring solicitation in the state within the meaning of said section and thus requiring registration if any part of the funds raised within the state or from residents and inhabitants of the state by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state inure to the benefit of the parent foundation or organization whether in the form of a percentage division or "split" or affiliation fee or fees paid by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state.

(1) In addition the following clarification of definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Vending device" as defined by Section 13-22-2(12) and "Vending device decal" as defined by Section 13-22-2(13) as they relate to the necessity of registering as a charitable organization, professional fund raiser, professional fund raising counsel or consultant creates a rebuttable presumption that the party utilizing such a vending device and or vending device decal is acting as such.

**R152-22-3. Application for Charitable Organization Permit.**

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section 501(c)(3) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of

directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks;

(h) as to the most recent tax year:

(A) if the applicant filed an IRS Form 990, a copy of the most recent IRS filing;

(B) if the applicant filed an IRS Form 990-EZ, 990-N, or 990-PF:

(I) a copy of the most recent IRS filing; and

(II) a completed Utah Statement of Functional Expenses;

(C) if the applicant is not required to file any type of IRS Form 990, a completed Utah Statement of Functional Expenses; or

(D) if the applicant has no previous financial information, the financial portion of the application, completed on a pro forma basis; and

(i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(4) All initial applications and renewals of registration in accordance with Section 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

**R152-22-4. Financial Reports and IRS Form 990s.**

(1) Based on the intent of Section 13-22-15(4) an "annual financial report or IRS Form 990" means the most recent or previous fiscal year only will be accepted by the division.

(2) Based on the intent of Section 13-22-15(2) "within 30 days after the end of the year reported" means the end of the registration year just completed.

**R152-22-5. Notice of Claim of Exemption.**

(1) A charitable organization or individual claiming an exemption from registration under Section 13-22-8 shall file a notice of claim of exemption with the division, prior to conducting any solicitation.

(2) A notice of claim of exemption shall contain:

(a) a detailed description of the claimant and its charitable purposes;

(b) a citation to the exemption within Section 13-22-8 being claimed and a detailed explanation of why the exemption applies;

(c) any documents supporting the notice of claim of exemption;

(d) a notarized statement from the organization's chief executive officer or the individual certifying that the statements made in the notice of claim of exemption are true to the best of his knowledge; and

(e) such other additional information the division deems necessary to support such claim of exemption.

(3) This rule does not relieve any exempt organization or individual of other applicable reporting requirements under the Act.

(4) The division shall charge a reasonable fee to cover the expense of processing the notices of claim of exemption received pursuant to this rule.

**R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.**

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and

(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(3) All initial applications and renewals of registration in accordance with Section 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.

(4) Professional fund raisers that provide services only through online or web-based software may submit a copy of the terms and conditions that all users must agree to along with evidence demonstrating that a user accepted the terms and conditions.

**R152-22-7. Incomplete Applications.**

(1) Based on Sections 13-22-6(3) and 13-22-9(3) the division may grant a charitable organization, professional fund raiser, professional fund raising counsel or consultant a 10 calendar day "grace" period for an incomplete application prior to assessing a penalty fee.

(2) Based on Section 13-22-6(1)(xiv)(B) and Section 13-22-6(3) if a charitable organization's initial application or renewal application is deemed incomplete due to the organization's professional fund raiser, professional fund raising counsel or consultant not being registered the division may assess a penalty fee accordingly.

(3) Based on Sections 13-22-6(3) and 13-22-9(3) the division may as regards any charitable organization, professional fund raiser, professional fund raising counsel or consultant whose status is that of "incomplete" or "suspended" for more than 12 months permit such to elect to submit the accumulated penalty fee or cease solicitations in the state for a 1 year period prior to making reapplication.

(4) Based on Sections 13-22-6(3) and 13-22-9(3) the division shall impose a penalty fee of \$25 for each calendar month or part of a calendar month after the date on which a permit application or renewal was due to be filed or such permit application or renewal remains incomplete.

**R152-22-8. Commencement of Solicitation.**

(1) After registration and receipt of a current permit prior to commencement of each solicitation campaign thereafter each professional fund raiser, fund raising counsel or consultant or charitable organization shall notify the Division in writing at least ten (10) days in advance of its intent to commence a campaign.

(2) Professional fund raisers, fund raising counsels or consultants shall not commence or conduct or continue solicitations on behalf of a charitable organization that is not currently registered. "Not currently registered" means not being in possession of a current permit during all times during the

solicitation campaign. A professional fund raiser, fund raising counsel or consultant act at their own peril if prior to commencement of any individual solicitation campaign its fails or neglects to confirm with the division that the charitable organization is in fact currently registered and will be during the full extent of any proposed solicitation campaign.

**R152-22-9. Grounds for Denial, Suspension or Revocation Procedure.**

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny an initial or renewal application for registration as per Section 13-22-12(5), and suspend or revoke a registration, permit, or information card at anytime, on the grounds set forth in Section 13-22-12(3); and if the necessity of such denial, suspension or revocation in the director's opinion is based on facts known by the division or presented to the division showing that an immediate and significant danger to the public health, safety or welfare exists, and such threat requires immediate action by the director that such denial, suspension or revocation may issue forthwith as an emergency order, subject to the division's compliance with Section 63G-4-502.

(2) Any hearing convened in accordance with R152-22-11(1), shall be convened within 5 business days of the request for or order of the Division requiring the same. Administrative hearing determinations regarding such Division actions shall receive priority and decisions shall be expedited so as to be issued within no more than 5 business days of such hearings.

**KEY: charities, consumer protection, solicitations, registration**

<b>September 21, 2015</b>	<b>13-2-5</b>
<b>Notice of Continuation December 1, 2016</b>	<b>13-22-6</b>
	<b>13-22-8</b>
	<b>13-22-9</b>
	<b>13-22-10</b>

**R152. Commerce, Consumer Protection.****R152-23. Utah Health Spa Services.****R152-23-1. Authority.**

These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the Health Spa Services Protection Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended.

**R152-23-2. Scope and Applicability.**

These rules shall apply to the conduct of every health spa within the State of Utah.

**R152-23-3. Definitions.**

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

(1) "Advance Sales" shall mean sales of consumer contracts on any date prior to the date a health spa facility becomes fully operational and available for use.

(2) "Costs" shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) "Facility" means the physical building where the health spa services are provided.

(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a health spa that is doing business in Utah.

**R152-23-4. Registration Requirements.**

(1) A health spa may not operate in this state without first having received a registration permit from the Division. Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the health spa Facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for health and fitness services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the health spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

(f) The number of consumer contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each employee, independent contractor, or any other health spa service provider who will be authorized by the registrant to use the health spa's facilities in providing health spa services to consumers during the year.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(3) A separate registration shall be required for each facility that is maintained and operated by a health spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the health spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

**R152-23-5. Health Spa Consumer Contracts for Health Spa Services.**

(1) Health Spa consumer contracts shall contain the following provisions:

(a) Each consumer contract shall contain:

(i) the date of the transaction, including the date health spa services will commence and expire;

(ii) the name and address of the health spa facility; and

(iii) the name, address, email address (if available), and telephone number of the consumer.

(b) Each consumer contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) A health spa that is required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSURES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER OF THIS CONTRACT, OR ASSIGNS OF THE SELLER, IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE CONSUMER INTENDS TO PATRONIZE, SELLER WILL REFUND TO CONSUMER A PRORATA SHARE OF THE CONTRACT COST, BASED UPON THE UNUSED TIME REMAINING ACCORDING TO THE CONTRACT."

(ii) A health spa that is not required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: "IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE (5) MILES, NO FURTHER PAYMENTS UNDER THIS CONTRACT SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT."

(c) All consumer contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the contract are subject to deletion or change at the discretion of the facility.

(d) Each consumer contract shall include one of the following provisions regarding the consumer's right of rescission under Section 13-23-3(6). The provision shall be bolded and printed in capital letters with at least 12 point font and shall be located on the first page of the contract and just above the signature line.

(i) Consumer contracts sold in advance sales shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE. IF THE HEALTH SPA DOES NOT BECOME FULLY OPERATIONAL AND AVAILABLE FOR USE WITHIN 60 DAYS AFTER THE DATE OF THE CONTRACT, YOU MAY CANCEL THIS CONTRACT AT ANY TIME."

(ii) All other consumer contracts shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."

(e) All consumer contracts shall itemize the costs to the consumer and shall include a statement as to the total cost of the contract. These costs shall be clearly stated on the first page of the contract.

(f) Every consumer contract shall clearly state the beginning and expiration dates of its term. In any event, no consumer contract shall provide for a term of longer than thirty-

six (36) months.

(2) The consumer contract or any attachment to it shall clearly state any rules of the health spa that apply to:

- (a) the consumer's use of its facilities and services; and
- (b) cancellation and refund policies of the health spa, which shall include:

(i) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after the three-business-day cooling-off period under Section 13-23-3(6).

(ii) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after a consumer has received a portion of the contracted health spa services.

(3) Each consumer contract shall specify which equipment or facility of the health spa is omitted from the contract's coverage.

#### **R152-23-6. Rescission.**

(1) Except where advanced sales are involved, no fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).

(2) When the consumer contract is the result of the health spa's advance sales and the consumer exercises the consumer's right to rescind, then a fee may be charged against the payments made by the consumer to the extent allowed by Section 13-23-4.

#### **R152-23-7. Procedure When Facility Closes.**

(1) In the event a health spa shall, for any reason, close, discontinue normal operations for a period of ten (10) business days, or otherwise cease to do business at any of its facilities while having outstanding obligations to provide health spa services to consumers holding valid consumer contracts, the health spa shall, after obtaining the Division's approval, immediately refund the unused portion of all fees, including the proration of any fees paid up front. The proration of fees paid up front is required only on initial contracts unless similar fees were charged when the contracts were renewed.

(2) Within ten (10) business days of the closure of its facility, the health spa shall provide the Division with a copy of each consumer contract that was valid on the date of closure.

(3) The Division shall determine the amount of refunds that shall be made and to whom. Such refunds shall be made under the supervision and with the prior approval of the Division. If sufficient funds are not available to make a full refund, then the refund shall be made from the surety proceeds on a prorata basis based upon the full amount that is determined to be due to all consumers. The refund amount due shall be determined by multiplying the number of days remaining on the consumer's contract term as of the date of closure by the daily cost of the health spa services contract to the consumer at the time of purchase. The health spa shall remain responsible for the balance.

(4) For purposes of Sections 13-23-5(6) and (7), the distance of five (5) miles shall be calculated by the distance traveled by an automobile over a public road.

(5) The notice required in Section 13-23-5(7) shall be in writing and shall include the following:

- (a) The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;
- (b) Information concerning consumers holding contracts with the health spa, including:
  - (i) the total number of active consumer contracts;
  - (ii) the name, address, email address, and telephone number of each consumer;
  - (iii) the total cost of each consumer contract; and
  - (iv) the effective beginning and ending dates of each consumer contract;

(c) Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the Division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah Code;

(d) A description of what action the health spa plans to take with regard to its consumers holding contracts for health spa services, including:

- (i) the amount of each consumer's refund;
- (ii) any reason refunds are not to be made;
- (iii) an explanation of how refunds are to be calculated;

and

(iv) copies of the refund checks that the health spa has issued.

(e) Any complaints that the health spa has received from consumers and how the complaints were resolved.

(6) Within thirty (30) days prior to closing, the health spa shall notify consumers of the closure in writing and set forth what actions the health spa plans to take in regards to transfers, cancellations or refunds.

(7) Once the health spa has notified the Division of its intent to cease operations, it may not offer, sell or attempt to sell, solicit the sale of, or become a party to any new contracts to provide health spa services within forty-five (45) days preceding the anticipated date of closure.

(8) In the event a health spa transfers its contracts to an alternative facility located within five (5) miles of the facility of origin, neither the health spa facility transferring consumer contracts nor the health spa facility receiving consumer contracts may charge any additional fees to contract holders in order to gain access to or otherwise utilize services originally contracted for.

(a) Contract transfers shall be serviced at health spa facilities that are comparable to the facility of origin. In instances where consumers have paid for services that are not offered or are otherwise not comparable, the health spa shall obtain written authorization from consumers to transfer to the noncomparable facility or make an offer to rescind the contract.

#### **R152-23-8. Bond, Irrevocable Letter of Credit, or Certificate of Deposit.**

(1) The surety required by Section 13-23-5(2) shall be provided to the Division not less than thirty (30) days in advance of any advanced sales by any health spa. Annual renewals of such Bonds, Irrevocable Letters of Credit, or Certificates of Deposit shall be filed with the Division not less than thirty (30) days in advance of expiration of existing Bonds, Irrevocable Letters of Credit, or Certificates of Deposit.

(2) The Division shall have the right to approve or reject Bonds, Irrevocable Letters of Credit, or Certificates of Deposit submitted to the Division. In the event a Bond, Irrevocable Letter of Credit, or Certificate of Deposit is rejected by the Division, the health spa shall submit another surety within fifteen (15) days following notice by the Division. In no event shall a health spa operate without having a Bond, Irrevocable Letter of Credit, or Certificate of Deposit in effect or establishing an exemption pursuant to Section 13-23-6.

(3) In addition to consumer refunds, the Division shall be entitled to recover from the surety proceeds all of its costs and fines as allowed by Sections 13-23-5(2)(c) and (e).

**KEY: consumer protection, health spas  
October 16, 2014  
Notice of Continuation December 1, 2016**

**63G-3-201  
13-2-5  
13-23-1**

**R152. Commerce, Consumer Protection.****R152-42. Uniform Debt-Management Services Act Rules.****R152-42-1. Authority, Purpose and Definitions.**

These rules are promulgated under Utah Code Section 13-42-102(9)(c), 13-42-112(2), 13-42-132(3), and 13-42-132(6) to facilitate the orderly administration of the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42.

**R152-42-2. Application for Registration.**

In addition to the requirements contained in Sections 13-42-105 and 13-42-106, applicants shall submit to the division with their initial application a copy of the applicant's articles of incorporation or other organizational documentation showing the applicant's current legal status.

**R152-42-3. Registration in Another State.**

(1) If a provider holds a license or certificate of registration authorizing it to provide debt-management services in another state, the provider may submit a copy of that license or certificate and the application for that license or certificate, instead of an application in the form prescribed by the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42, provided that the license or certificate was issued by one of the following states:

- (a) Rhode Island, pursuant to Rhode Island General Laws, Title 19, Chapter 14.8;
- (b) Delaware, pursuant to Delaware Code Annotated, Title 6, Chapter 24A; or
- (c) any state approved by the Division by rule.

(2) To qualify under this rule, the provider must meet all the requirements of Utah Code Section 13-42-112, including filing a surety bond or substitute in accordance with Utah Code Section 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this state.

**R152-42-4. Independent Accrediting Organizations.**

In order to comply with requirements of Utah Code Section 13-42-106(8) a provider must provide evidence of accreditation by an independent accrediting organization approved by the Director of the Division that assures compliance with industry standards. A list of organizations that have been approved can be found on the Division's website or obtained by contacting the Division.

**R152-42-5. Certification of Counselors.**

In order to comply with the requirements of Utah Code Section 13-42-106(9), a provider must provide evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor. A list of organizations or programs that have been approved can be found on the Division's website or by contacting the Division.

**R152-42-6. Adoption of Base Year.**

Pursuant to Utah Code Section 13-42-132(6), the Division adopts a base year of 2007.

**KEY: debt-management, consumer protection**

May 22, 2007 13-42-102(9)(c)  
 Notice of Continuation December 1, 2016 13-42-112(2)  
 13-42-132(3)  
 13-42-132(6)

**R156. Commerce, Occupational and Professional Licensing.****R156-3a. Architect Licensing Act Rule.****R156-3a-101. Title.**

This rule is known as the "Architect Licensing Act Rule".

**R156-3a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1, 3a, and 22 or this rule:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the Architect Licensing Advisor created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "EESA" means the Education Evaluation Services for Architects.

(5) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(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 Subsection 58-3a-603(1) or Subsection 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work that affects not greater than 49 occupants as determined in Title 15A, State Construction and Fire Codes Act;

(e) unless exempt from licensure as provided in Subsection 58-3a-304(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 risk category of III or IV as defined in Title 15A, State Construction and Fire Codes Act.

(7) "Architect Experience Program" or "AXP" as used in Subsection R156-3a-302(1) means an NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Architect Experience Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any jurisdiction that is a member of NCARB.

(12) "Responsible charge" by a principal, as used in Subsection 58-3a-102(7), means direct control and management by a principal over the practice of architecture by an organization.

(13) "Technical submissions", as used in Section R156-3a-

601, means documents which are:

(a) required by public authorities for building permits or regulatory approvals; or

(b) intended for construction purposes, including all addenda and other changes to submissions.

(14) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(15) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-3a-502.

**R156-3a-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 3a.

**R156-3a-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.

**R156-3a-201. Advisory Peer Committee Created - Membership - Duties.**

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Architect Licensing Advisor as an advisory peer committee to the Architect Licensing Board consisting of one or more members as follows:

(a) a State Architect Licensing Advisor; or

(b) an Education Coordinator.

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The duties and responsibilities of the committee shall include assisting the Board in its duties, functions, and responsibilities defined in Subsection 58-1-202(1)(e) as follows:

(a) promote an awareness of the AXP by holding meetings and seminars on the AXP;

(b) establish a network of sponsors and advisors for AXP interns;

(c) encourage firms to support the AXP;

(d) act as a resource to respond to questions on the AXP received from advisors, sponsors, and interns; and

(e) report to the Board as directed.

**R156-3a-301. Qualifications for Licensure - Architecture Program Criteria.**

In accordance with Subsection 58-3a-302(1)(d), the architecture program criteria are established as follows.

(1) The architecture program shall be accredited by either the National Architectural Accrediting Board (NAAB), or the Canadian Architectural Certification Board (CACB), or an architectural program equivalent to a NAAB accredited program.

(2) Equivalency shall be documented by submitting one of the following:

(a) If educated in a foreign country, an applicant shall submit a comprehensive report prepared by EESA stating that the applicant has successfully completed an educational program that is equivalent to the NAAB accredited educational program.

(i) Deficiencies in general education or history, human behavior and environment may be satisfied by successfully completing the deficiencies in course work at a recognized college or university or by passing the College Level

Examination Program (CLEP) demonstrating proficiency in the deficient areas.

(ii) Deficiencies in design, technical systems, or practice course work may be completed at an NAAB accredited educational program.

(b) Alternatively, an applicant may submit verification of a current NCARB Certification.

(c)(i) If an applicant was previously licensed and practicing in Utah under a license that was granted under prior statute or rule but allowed the license to lapse for more than two years, the applicant may reinstate the license by demonstrating that their combined education, supervised experience and licensed practice demonstrate that the applicant's training is equivalent to an NAAB accredited educational program.

(ii) If the combined education and experience is not demonstrated to be equivalent, the Division, in collaboration with the Board, may:

(A) determine whether continuing education can bring the combined education and experience up to equivalency, and if so, specify the type of continuing education required; or

(B) determine that the applicant shall be required to obtain the actual degree under Subsection (1).

#### **R156-3a-302. Qualifications for Licensure - Program of Diversified Practical Experience.**

In accordance with Subsection 58-3a-302(1)(e), an applicant shall establish completion of a program of diversified practical experience requirement by submitting documentation of:

- (1) AXP;
- (2) current licensure in a recognized jurisdiction; or
- (3) current NCARB Certification.

#### **R156-3a-303. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsections 58-3a-302(1)(f) and 58-3a-302(2)(e), an applicant for licensure as an architect (whether by education and experience or by endorsement) shall submit documentation establishing:

- (a) current NCARB Certification; or
- (b) passing scores on all divisions of the ARE as established by NCARB.

(2) An applicant for licensure may apply directly to NCARB to sit for any part of the ARE examination anytime after having completed the education requirements specified in Section R156-3a-301.

#### **R156-3a-304. Continuing Education for Architects.**

In accordance with Section 58-3a-303.5, the continuing education standards for architects are established as follows:

(1)(a) During each two year period ending on December 31 of each odd numbered year, a licensed architect shall complete not less than 24 hours of continuing education directly related to the licensee's professional practice.

(b) At least 12 hours should be completed each year.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Continuing education under this section shall:

(a) have an identifiable, clear statement of purpose and defined objective for the educational program directly related to the practice of an architect and directly related to topics involving the public health, safety, and welfare of architectural practice and the ethical standards of architectural practice;

(i) health, safety, welfare and ethical standards as used in this subsection are defined to include the following:

(A) The definition of "health" shall include, but not be

limited to, aspects of architecture that have salutary effects among users of buildings or sites and that address environmental issues. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

(B) The definition of "safety" shall include, but not be limited to, aspects of architecture intended to limit or prevent accidental injury or death among users of buildings or construction sites. Examples include fire-rated egress enclosures, automatic sprinkler systems, stairs with correct rise-to-run proportions, and accommodations for users with disabilities.

(C) The definition of "welfare" shall include, but not be limited to, aspects of architecture that consist of values that may be spiritual, physical, aesthetic and monetary in nature. Examples include spaces that afford natural light or views of nature or whose proportions, color or materials engender positive emotional responses from its users.

(D)(a) The definition of "ethical standards of architectural practice" shall include, but not be limited to the NCARB rules of conduct specified in Subsection R156-3a-502(4).

(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 continuing education program and records of that registration and completion are available for review.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of eight hours per two year period may be recognized for teaching in a college or university or for teaching continuing education courses in the field of architecture, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of three hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of architecture and submitted for publication; and

(d) unlimited hours may be recognized for continuing education that is provided via the 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 continuing education for a period of six years after the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to continuing education to demonstrate it meets the requirements under this section.

(6) A licensee who is unable to complete the continuing education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(7) Any licensee who fails to timely complete the continuing education hours 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 shall be required to

complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

**R156-3a-305. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 3a is established by rule in Subsection R156-1-308a(1).

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

**R156-3a-306. Inactive Status.**

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee shall not engage in the practice of architecture 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 prior to the license being reactivated, completed 24 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

**R156-3a-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) a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise reasonable charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter;

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the 2014-2015 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or

(5) failing as a supervising architect to verify actual work experience when requested by a subordinate, associate or drafter of an architect who is or has been an employee.

**R156-3a-503. Administrative Penalties.**

(1) In accordance with Section 58-3a-502, the following fine schedule shall apply to citations issued to individuals licensed under Title 58, Chapters 1 and 3a:

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
58-3a-501(1)	\$ 800.00	\$1,600.00
58-3a-501(2)	\$ 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 58-3a-502(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.

**R156-3a-601. Architectural Seal - Requirements.**

In accordance with Section 58-3a-601, all technical submissions prepared by the licensee or prepared under the supervision of the licensee, shall be signed and dated with the licensee's seal. Electronically generated seals and signatures are acceptable. It is the responsibility of the licensee to provide adequate security when documents with electronic seals and electronic signatures are distributed. Sheets subsequent to the cover of specifications are not required to be sealed, signed and dated.

(1) Each seal shall be a circular seal, 1-1/2 inches minimum diameter and shall include the licensee's name, license number, "State of Utah", and "Licensed Architect".

**KEY: architects, licensing**

**November 7, 2016**

**Notice of Continuation January 7, 2016**

**58-3a-101**

**58-3a-303.5**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-28. Veterinary Practice Act Rule.**  
**R156-28-101. Title.**

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

**R156-28-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or this rule:

(1) "In association with licensed veterinarians", as used in Subsection 58-28-307(6), means the out of state licensed veterinarian is performing veterinarian services in this state as the result of a request for assistance or consultation initiated by a Utah licensed veterinarian regarding a specific client or patient and the services provided by the out of state licensed veterinarian are limited to that specific request.

(2) "NBEC" means the National Board Examination Committee of the American Veterinary Medical Association.

(3) "Patient" means any animal receiving veterinarian services.

(4) "Practice of veterinary medicine, surgery, and dentistry" as defined in Subsection 58-28-102(11) does not include the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-28-502.

**R156-28-103. 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 28.

**R156-28-104. 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.

**R156-28-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the education requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall comply with one of the following:

(a) an official transcript demonstrating that the applicant has graduated from a veterinary college which held current accreditation by the Council on Education of the American Veterinary Medical Association (AVMA) at the time of the applicant's graduation; or

(b) if the applicant received a veterinary degree in a foreign country, demonstrate that the applicant's foreign education is equivalent to the requirements of Subsection R156-28-302a(1)(a) by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) or the American Association of Veterinary State Boards (AAVSB) Program for Assessment of Veterinary Education Equivalence (PAVE).

(2) Each applicant for licensure as a veterinarian intern shall demonstrate that the applicant has met the education provided in Subsection R156-28-302a(1); however, if the applicant has graduated, but the educational institution has not yet posted the degree on the official transcript, the applicant may submit the official transcript together with a notarized letter from the dean or registrar of the educational institution, which certifies that the applicant has obtained the degree but it is not yet posted to the official transcript.

**R156-28-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsections 58-1-203(1) and 58-1-

301(3), the experience requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall:

(a) complete 1000 hours of experience while licensed as a veterinarian intern under the supervision of a licensed veterinarian in accordance with the following.

(i) Experience shall be earned in not less than six months and completed within two years of the date of the application.

(ii) Experience in the following settings is not acceptable to fulfill this experience requirement:

(A) temporary employment experiences of less than eight weeks in duration; or

(B) part time experience of less than 20 hours per week.

(iii) Experience completed while employed as unlicensed assistive personnel is not acceptable to fulfill this experience requirement.

(iv) If the experience is completed in a jurisdiction outside of Utah which does not issue licensure as a veterinarian or as a veterinarian intern or comparable licenses or was completed in a setting which does not require licensure, the applicant shall demonstrate that the experience was:

(A) lawfully obtained;

(B) obtained after the applicant met the education requirement specified in Section R156-28-302a;

(C) supervised by a competent supervisor who was licensed as a veterinarian or exempted from licensure, except if the supervisor was exempted from licensure, the applicant must demonstrate the qualifications and competence of the supervisor; and

(D) comparable to experience that would be obtained in a standard veterinarian practice setting in Utah.

(v) Supervision of the intern by the licensed veterinarian may be obtained by "indirect supervision" as defined in Section 58-28-102 provided that the supervisor supplements the indirect supervision with routine face to face contact as the licensed veterinarian deems appropriate using professional judgment.

(vi) Each applicant shall demonstrate completion of the experience required by submitting a verification of experience signed by the applicant and the applicant's supervising veterinarian on forms approved by the Division.

(vii) 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.

(b) In accordance with Subsections 58-37-6(1)(a), 58-37-6(5)(b)(i) and R156-37-305(1), a veterinarian intern is not eligible to obtain a controlled substance license during the internship.

**R156-28-302c. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for licensure in Subsection 58-28-302(1)(b) are defined, clarified, or established as follows:

(1) Applicants who passed the examinations listed in this subsection prior to May 1, 2000 shall submit documentation showing they passed:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC; and

(b) the Clinical Competency Test (CCT) of the NBEC with a minimum passing score as determined by the NBEC.

(2) Applicants who did not pass the examinations listed in

Subsection (1) prior to May 1, 2000 shall submit documentation showing they passed the North American Veterinarian Licensing Examination (NAVLE) with a score as determined by the NBEC.

(3) To be eligible to sit for the NAVLE examination, an applicant shall submit the following:

- (a) an application for approval to sit for the NAVLE examination;
- (b) the application fee; and
- (c) documentation showing the applicant has met the education requirement specified in Section R156-28-302a or will complete the education requirement at the end of the semester or quarter in which the applicant is currently enrolled. If the applicant is enrolled in the final semester or quarter before obtaining the degree, documentation of the applicant's student status shall be provided by a letter from the dean or registrar of the educational institution confirming the applicant is a student in good standing and will graduate with the next graduating class.

#### **R156-28-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 28 is established by rule in Section R156-1-308a(1).

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

(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

#### **R156-28-304. Continuing Professional Education.**

In accordance with Section 58-28-306, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 28. The continuing professional education requirement shall comply with the following criteria.

(1) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified continuing professional education directly related to the licensee's professional practice.

(2) The required number of hours of continuing professional education for an individual who first becomes licensed during the two year period shall be decreased by a pro-rata amount equal to the 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 veterinarian;
- (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 continuing professional education shall be recognized in accordance with the following:

- (a) Unlimited hours shall be recognized for continuing professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by one or more of the following:
  - (i) the American Veterinary Medical Association;
  - (ii) the Utah Veterinary Medical Association;
  - (iii) the American Animal Hospital Association;
  - (iv) the American Association of Equine Practitioners;
  - (v) the American Association of Bovine Practitioners;
  - (vi) certifying boards recognized by the AVMA;
  - (vii) other state veterinary medical associations or state licensing boards; or
  - (viii) the Registry of Continuing Education (RACE) of the AASVB.

- (b) No more than five continuing professional education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal, and no more than two continuing professional education hours may be counted for being a secondary author.
- (c) No more than six continuing professional education hours may be in practice management courses.
- (d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.
- (5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.
- (6) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(c) No more than six continuing professional education hours may be in practice management courses.

(d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.

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

(6) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(c) No more than six continuing professional education hours may be in practice management courses.

#### **R156-28-502. Unprofessional Conduct.**

Unprofessional conduct includes:

(1) deviating from the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) permitting unlicensed assistive personnel to perform duties that the individual is not competent by education, training or experience to perform; and

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, July 1999, revised November 2003, which are hereby incorporated by reference, except that if a licensee fails to establish the veterinarian-client-patient relationship as required in Section III A. of those principles, such failure does not excuse the veterinarian from complying with all other duties that would be a part of the duties that would be imposed on a veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.

#### **R156-28-503. Minimum Standards of Practice.**

In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain records on each patient to minimally include:

- (a) client's name, address and phone number, if telephone is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages;

and

(e) date of service.

(2) A veterinarian shall:

(a) maintain veterinary medical records under Subsection

(1) above so that any veterinarian coming into a veterinary practice may, by reading the veterinary medical record of a particular animal, be able to proceed with the proper care and treatment of the animal; and

(b) maintain veterinary medical records under Subsection

(1) above for a minimum of five years from the date that the animal was last treated by the veterinarian.

(3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.

**KEY: veterinary medicine, licensing, veterinarian**

**May 27, 2015 58-1-106(1)(a)**

**Notice of Continuation November 3, 2016 58-1-202(1)(a)**

**58-28-101**

**R156. Commerce, Occupational and Professional Licensing.****R156-40a. Athletic Trainer Licensing Act Rule.****R156-40a-101. Title.**

This rule is known as the Athletic Trainer Licensing Act Rule.

**R156-40a-102. Definitions.**

In accordance with Subsection 58-1-203(1)(e), the definition of unprofessional conduct in Title 58, Chapters 1 and 40 is further defined in Section R156-40a-502.

**R156-40a-104. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 40a.

**R156-40a-105. Organization - Relationship to Rule R156-1.**

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

**R156-40a-302a. Qualifications for Licensure.**

In accordance with Subsection 58-40a-302(1), the "athletic training curriculum requirement" shall be:

(1) the curriculum program standard for accreditation set forth in the Standards for the Accreditation of Entry-Level Athletic Training Education Programs, revised June 8, 2006, published by the Commission on Accreditation of Athletic Training Education (CAATE), which is hereby adopted and incorporated by reference; or

(2) a program of education, training and experience approved by the Board of Certification, Inc. (BOC), or its successor.

**R156-40a-304. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 40a is established by rule in Subsection R156-1-308a(1).

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

**R156-40a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes violating any provision of the Board of Certification Standards of Professional Practice, implemented January 1, 2006, which is hereby adopted and incorporated by reference.

**KEY: licensing, occupational licensing, athletic trainers****July 22, 2014****58-40a-101****Notice of Continuation November 3, 2016****58-1-106(1)(a)****58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-41. Speech-Language Pathology and Audiology Licensing Act Rule.**

**R156-41-101. Title.**

This rule is known as the "Speech-Language Pathology and Audiology Licensing Act Rule".

**R156-41-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 41, as used in Title 58, Chapters 1 and 41, or this rule:

(1) "Audio electronic equipment" as used in Subsection 58-41-2(3) means equipment proven in use, accepted and standard to the profession, of known quality and function, well maintained, in current calibration and presenting no hazard to the operator or client.

(2) "Clinical externship", as used in Section R156-41-302b, means the same as a clinical fellowship as used in Subsection 58-41-5.5(1)(a)(ii).

(3) "Direct supervision" as used in Subsections 58-41-2(5)(c), 58-41-2(20)(c), and this rule, means supervision as defined in Subsection R156-1-102a(4)(a).

(4) "Evoked potentials evaluation", as used in Subsection 58-41-2(4), includes neurophysiological intraoperative monitoring.

(5) "Legal holder of an AuD in audiology", as used in Subsection 58-41-5(1)(c), means an applicant for temporary licensure as an audiologist who holds a letter from an accredited university or college, verifying the applicant is currently enrolled and has completed all the course work in a program of studies necessary to complete a doctors degree in audiology except for the completion of a clinical externship.

(6) "Professional training" as set forth in Subsection 58-41-12(2) means continuing professional education that meets the standards set forth in Section R156-41-304.

(7) "Substitute supervisor", as used in this rule, means a licensee who is designated by the supervisor to provide limited supervision to an aide. The substitute supervisor shall be licensed in the same discipline in which the aide is functioning.

(8) "Supervision", as used in this rule, means a supervisor-supervisee relationship requiring the supervisor to be responsible for the professional performance by the supervisee. This includes a substitute supervisor-supervisee relationship.

(9) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 41, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-41-502.

**R156-41-103. 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 41.

**R156-41-104. 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.

**R156-41-302a. Qualifications for Licensure - Application Requirements.**

In accordance with Section 58-41-5, ASHA certification as a speech-language pathologist or audiologist is one acceptable method to document that an individual has completed the requirements of Subsections 58-41-5(1)(f) and (4)(e).

**R156-41-302b. Qualifications for Licensure - Temporary Licensure - Audiology.**

In accordance with Section 58-41-5.5, the Division may issue a temporary license to an applicant for an audiology license for not more than 12 months to complete a clinical externship required for an AuD under the following conditions:

(1) The licensee shall work under general supervision, as

defined in Subsection R156-1-102a(4)(c), of an audiologist licensed in Utah and approved by the Division.

(2) The supervising audiologist shall:

(a) have been licensed for not less than two years;

(b) not have been disciplined for any unprofessional or unlawful conduct within two years of the start of any supervision of a clinical externship program;

(c) assume responsibility for all audiology activities and services performed by the temporary licensee;

(d) not begin the supervision until the applicant holds a temporary license; and

(e) supervise no more than two temporary licensees at any given time.

(3) Any change in the supervising audiologist shall be preapproved by the Division.

**R156-41-302c. Qualifications for Licensure - Temporary Licensure - Speech-Language Pathology.**

In accordance with Section 58-41-5.5, the Division may issue a temporary license to an applicant for a speech-language pathology license for a period of not more than 12 months to complete a clinical fellowship as required by ASHA under the following conditions:

(1) The licensee shall work under the general supervision, as defined in Subsection R156-1-102a(4)(c), of a speech-language pathologist licensed in Utah and approved by the Division.

(2) The supervision speech-language pathologist shall:

(a) have been licensed for not less than two years;

(b) not have been disciplined for any unprofessional or unlawful conduct within two years of the start of any supervision of a clinical externship program;

(c) assume responsibility for all speech-language pathology activities and services performed by the temporary licensee;

(d) not begin the supervision until the applicant holds a temporary license; and

(e) supervise no more than two temporary licensees at any given time.

(3) Any change in the supervising speech-language pathologist shall be preapproved by the Division.

**R156-41-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 41, is established by rule in Section R156-1-308a.

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

**R156-41-304. Continuing Professional Education.**

In accordance with Subsection 58-41-12(2), continuing professional education requirements are established as follows:

(1) During each two year period an individual licensed as a speech-language pathologist, speech-language pathologist/audiologist or audiologist shall be required to complete not less than 20 hours of continuing professional education directly related the licensee's professional practice.

(2) The required number of hours of continuing 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) 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 speech-language pathology, audiology or both;

(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 continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

(5) A licensee shall be responsible for maintaining competent records of completed 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 continuing professional education to demonstrate it meets the requirements under this section.

(6) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**R156-41-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) using an educational title conferred by an organization or institution that is not a regionally accredited college or university;

(2) engaging in sexual intercourse or other sexual contact with a client or patient;

(3) exercising undue influence in a manner as to exploit the client, patient, or supervisee for financial or other personal advantage to the practitioner or a third party;

(4) using or training audiology or speech-language pathology aides as defined in Subsections 58-41-2(5) and (20) and inappropriately failing to follow the standards set forth in Section R156-41-601;

(5) failing to comply with the American Speech-Language Hearing Association's (ASHA) Code of Ethics, March 1, 2010 edition, which is hereby incorporated by reference;

(6) supervising more than two audiology or speech-language pathology temporary licensees at one time;

(7) failing as an audiologist supervisor to comply with any of the requirements of Subsection R156-41-302b(2); and

(8) failing as a speech-language pathologist supervisor to comply with any of the requirements of Subsection R156-41-302c(2).

**R156-41-601. Speech-Language Pathology and Audiology Aides.**

(1) In accordance with Subsections 58-41-2(5) and (20), an individual licensed to engage in practice as a speech-language pathologist or audiologist may employ as an aide an individual who has graduated from an accredited high school or obtained a certificate of equivalency approved by the Division.

(2) A licensee supervising an aide shall be responsible for the direct supervision of an aide.

(3) A licensee supervising an aide must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.

(4) A licensee shall be permitted to supervise not more

than three aides at any one time.

(5) An aide shall not engage in the following:

(a) preparing diagnostic statements or clinical management plans, strategies or procedures;

(b) communicating obtained observations or results to anyone other than the aide's supervising speech-language pathologist or audiologist;

(c) determining case selection;

(d) independently composing or signing clinical reports; except an aide may enter progress notes into the patient's file reflecting the results of the aide's assigned duties;

(e) independently diagnosing, treating, discharging of patient, or advising of patient disposition; and

(f) referral of a patient to other professionals or agencies.

(6) Upon the request of the Division, a licensee who employs an aide must provide documentation that the aide has met the qualifications as listed in Subsection (1), and that the aide is functioning under a utilization plan.

**R156-41-602. Form of Written Informed Consent.**

(1) In accordance with Section 58-41-17, a speech-language pathologist or audiologist licensed under this chapter who offers to sell a hearing aid to a consumer shall include the patient's informed consent in substantially the following form.

TABLE

ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of a hearing aid, you are required to be informed of certain information as provided in Section 58-41-17 of the Utah Code.

1. I (the consumer) have been informed regarding hearing aids that work with assistive listening systems that are compliant with the ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.

2. I (the consumer) have been provided with a written receipt or a written contract that provides the consumer with a 30-day right to cancel the purchase and to obtain a refund if the consumer returns the hearing aid to the seller in the same condition as when purchased, excluding ordinary wear and tear.

I hereby acknowledge being informed of the above and consent to the receive the hearing aid.  
Patient's Signature and Date

Patient's Authorized Representative Signature and Date  
Relationship to Patient

(2) A patient's informed consent form shall meet the following requirements:

(a) The 30-day written receipt or contract shall be written in at least 12-point font.

(b) The 30-day right to cancel shall commence from the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later.

(c) The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original deliver.

(d) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee equal to the actual cost that will be incurred by the seller in order to return the hearing aid to the manufacturer, provided that the written receipt or contract states the exact amount that will be retained by the seller as a cancellation fee.

**KEY: licensing, speech-language pathology, audiology**  
**November 10, 2015** **58-1-106(1)(a)**  
**Notice of Continuation November 3, 2016** **58-1-202(1)(a)**  
**58-41-1**

**R156. Commerce, Occupational and Professional Licensing.  
R156-55b. Electricians Licensing Act Rule.  
R156-55b-101. Title.**

This rule is known as the "Electricians Licensing Act Rule".

**R156-55b-102. Definitions.**

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

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision", as used in Subsection 58-55-102(23) and this rule means that the apprentice and the supervising electrician are physically present on the same project or jobsite but are not required to be within sight of one another.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in residential dwellings of up to three stories and will include single and multi family dwellings.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

**R156-55b-103. Authority.**

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

**R156-55b-104. Organization - Relationship to Rule R156-1.**

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

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

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

**R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.**

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on-the-job work experience:

(a) Residential Journeyman Electrician:

(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;

(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;

(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and

(iv) at least 300 hours in specialized work including

grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(b) Journeyman electrician:

(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;

(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;

(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and

(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(2) No more than 2000 hours of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

#### **R156-55b-302c. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b; or

(b) the journeyman applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55b-302a; and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55b-302b;

(c) the residential journeyman applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55b-302a; and

(ii) not less than 3,000 hours of the experience required under Subsection R156-55b-302b.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.

(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

#### **R156-55b-303. Renewal Cycle - Procedures.**

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

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

#### **R156-55b-304. Continuing Education.**

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.

(3) "Professional continuing education" is defined as education covering:

(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);

(b) electrical motors and motor controls, electrical tool usage; and

(c) supervision skills related to the electrical trade.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or

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

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

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

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

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the electrical trade.

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

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

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

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

(g) Distance learning. A course may be recognized for

continuing education that is provided through internet or home study courses provided that the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

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

- (i) the date of the course;
- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit;
- (vi) the attendee's name;
- (vii) the attendee's license number; and
- (viii) the signature of the course provider.

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

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

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

(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

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

(12) Continuing Education Registry.

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

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

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

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by

representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

#### **R156-55b-305. Licensure by Endorsement.**

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

#### **R156-55b-401. Conduct of Apprentice and Supervising Electrician.**

(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with Subsection 58-55-302(3)(j), Sections 58-55-501, 58-55-502, and R156-55b-501.

(2) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same electrical contractor;

(b) the electrical contractor may contract with a licensed professional employer organization to employ such persons.

(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

#### **R156-55b-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j).

(2) failing as a licensee to carry a copy of a current license at all times when performing electrical work;

(3) failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

#### **R156-55b-502. Administrative Penalties.**

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties applicable under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

#### **KEY: occupational licensing, licensing, contractors, electricians**

**November 7, 2016**

**Notice of Continuation August 8, 2016**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**58-55-308(1)**

**R156. Commerce, Occupational and Professional Licensing.****R156-70a. Physician Assistant Practice Act Rule.****R156-70a-101. Title.**

This rule is known as the "Physician Assistant Practice Act Rule".

**R156-70a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in this rule:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.

(2) "Locum tenens" means a medical practice situation in which one physician assistant acts as a temporary substitute for the physician assistant who regularly will or does practice in that particular setting.

(3) "On-site supervision", as used in Section R156-70a-501, means the physician assistant will be working in the same location as the supervising physician.

**R156-70a-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 70a.

**R156-70a-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.

**R156-70a-302. Qualification for Licensure - Examination Requirements.**

In accordance with Subsection 58-70a-302(5), the examination requirement for licensure as a physician assistant is a passing score on the National Commission on Certification of Physician Assistants (NCCPA) examination.

**R156-70a-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 70a is established by rule in Section R156-1-308a.

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

**R156-70a-304. Continuing Education.**

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours in each preceding two year licensure cycle. A licensee may submit documentation to the Division of current national certification by NCCPA; such certification shall be deemed to meet the requirements in this section.

(2) A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME).

(3) Approved providers for ACCME offerings include the following:

(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(b) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(4) A maximum of six hours may be recognized for non-ACCME offerings of continuing education provided by the Division of Occupational and Professional Licensing.

(5) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion.

(6) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (5) above.

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

(8) Continuing professional education for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

**R156-70a-305. Exemptions from Licensure.**

"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

(1) the circumstances and purpose under which any temporary supervision is permitted;

(2) the temporary supervision duties to be performed by the physician assistant;

(3) the amount of temporary supervision that is allowed; and

(4) how the physician will review the activities of students while under temporary supervision.

**R156-70a-501. Working Relationship and Delegation of Duties.**

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The supervising physician shall review and co-sign sufficient numbers of patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for review that are appropriate for the working relationship.

(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

**KEY: licensing, physician assistants  
May 27, 2015**

**58-70a-101**

Notice of Continuation November 3, 2016 58-1-106(1)(a)  
58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.  
R156-76. Professional Geologist Licensing Act Rule.  
R156-76-101. Title.**

This rule is known as the "Professional Geologist Licensing Act Rule".

**R156-76-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 76, as used in Title 58, Chapters 1 and 76, or this rule:

(1) "ASBOG" means Association of State Boards of Geology.

(2) "Geosciences", as used in Subsection 58-76-302(4)(a), means an earth science degree, which results in sufficient geological knowledge to enable the practice of geology before the public.

(3) "Qualified individual", as used in Section R156-76-302c, means a person who is licensed as a professional geologist in a recognized jurisdiction, or who otherwise meets the requirements for licensure as defined in Sections 58-76-302 and R156-76-302b and R156-76-302c.

(4) "Practice of geology before the public", as used in Subsection 58-76-102(3) does not include the following activities:

(a) routine sampling, laboratory work or geological drafting, where the elements of initiative, scientific judgment, and decision-making are lacking;

(b) data acquisition where geological interpretation is minimal and incidental (for example mud-logging, wireline logging, rock property measurements, dating, and geochemical, geophysical and biological surveys);

(c) the following aspects of paleontology:

(i) taxonomy;

(ii) biologic analysis of organisms; or

(iii) investigation and reporting of deposits which may be fossiliferous, including incidental geological analysis; or

(d) the following aspects of the practice of anthropology and archeology:

(i) archeological survey, excavation, and reporting;

(ii) production of archeological plan views, profiles, and regional overviews; or

(iii) investigation and reporting of artifacts or deposits that are modified or affected by past human behavior.

(5) "Principal", as used in Subsection 58-76-603(2), means the licensee assigned to and personally accountable for the production of specified professional geologic projects within an organization.

(6) "Recognized jurisdiction", as used in Subsection R156-76-302d(2), means any state, district or territory of the United States that issues a license for a professional geologist, and whose licensure requirements include:

(a) a bachelors or post graduate degree in the geosciences from an accredited institution or equivalent foreign education as determined by the International Credentialing Association and the Division in collaboration with the board;

(b) documented qualifying experience requirements similar to the experience requirements found in Subsection 58-76-302(5) and Section R156-76-302; and

(c) passing the ASBOG Fundamentals of Geology (FG) and the ASBOG Principles and Practice of Geology (PG) Examination.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 76, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-76-502.

**R156-76-103. Authority - Purpose.**

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 76.

**R156-76-104. 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.

**R156-76-302b. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Section 58-76-302, the education requirements for graduates of an approved geoscience program are as follows:

(a) an earned bachelors or masters degree in geology from an accredited institution; or

(b) an earned bachelor or post-graduate degree in the geosciences from an accredited institution including the completion of a minimum of 24 semester or 36 quarter hours in upper level or graduate geology courses, which includes one or more of the following subject areas:

(i) structural geology;

(ii) geophysics;

(iii) sedimentology/stratigraphy/paleontology;

(iv) mineralogy/petrology/geochemistry;

(v) engineering geology/environmental geology;

(vi) hydrogeology/hydrology;

(vii) geomorphology/remote sensing;

(viii) economic geology/petroleum geology; and

(ix) field geology.

(2) In accordance with Section 58-1-302, an applicant who has been educated in a foreign country shall submit a course-by-course accreditation evaluation completed by International Credentialing Associates to determine program equivalency.

**R156-76-302c. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsection 58-76-302(5), active professional practice requirements are clarified or established as follows:

(1) Professional practice shall be obtained after completing the minimum educational requirement for licensure.

(2) One year of active professional practice shall consist of a minimum of 2,000 hours of geological work experience under the supervision of a qualified individual, or in responsible charge as permitted by law.

(3) No more than 2,000 hours of active professional practice may be gained in any 12 month period of time.

(4) Qualifying work engagements consist of a range of activities included in the practice of geology consisting of more than the performance or supervision of geological work activities that are routine, such as routine sampling, laboratory work, or geological drafting, where the elements of initiative, scientific judgment and decision-making are lacking.

(5) Three years of geologic research or teaching activity in upper division or graduate level geology classes at an accredited university is equivalent to one year of qualifying experience.

**R156-76-302d. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-76-302(6), except as otherwise provided in Subsection (2) or(3), the examination requirements for licensure as a professional geologist after January 1, 2004 are established as follows:

(a) the ASBOG Fundamentals of Geology ("FG") Examination with a passing score as recommended by the ASBOG; and

(b) the ASBOG Principles and Practice of Geology ("PG") Examination with a passing score as established by the ASBOG.

(2) The ASBOG FG Examination shall not be required for an applicant who:

(a) has practiced as a principal for five years of the last seven years preceding the date of the license application;

(b) was not required to pass the ASBOG FG Examination

for initial licensure from the recognized jurisdiction the applicant was originally licensed; and

(c) has passed the ASBOG PG Examination.

(3) The ASBOG FG and PG Examinations shall not be required for an applicant who:

(a) has practiced as a principal for five years during the last seven years preceding the date of the license application;

(b) has been licensed for 20 years preceding the date of the license application; and

(c) who was not required to pass the ASBOG FG and PG Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed, but was required to pass a predecessor exam established by the recognized jurisdiction.

**R156-76-303. Renewal Cycle - Procedures.**

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 76, is established by rule in Section R156-1-308.

**R156-76-304. Exemption from Licensure.**

The exemption from licensure in Subsection 58-76-304(1) is defined or clarified as follows: An "employee" or "subordinate", as used therein and elsewhere in Title 58, Chapter 76, or this rule, means an individual who:

(1) is not licensed as a professional geologist;

(2) works with, for, or provides professional geologic services on work initiated by a person licensed as a professional geologist; and

(3) works only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed as a professional geologist.

**R156-76-501. Administrative Penalties - Unlawful Conduct.**

In accordance with Sections 58-76-501 and 58-76-502 and Subsections 58-1-501(1)(a) through (d), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: \$800

Second Offense: \$1,600

(2) Engaging in, or representing oneself as engaged in the practice of geology as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: \$800

Second Offense: \$1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: \$1,000

Second Offense: \$2,000

(5) Knowingly permitted any person to use his license except as permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(6) Citations shall 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 58-76-502(1)(i).

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

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

(9) 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.

**R156-76-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of plans to be complete and final; or

(b) to a government official for the purpose of obtaining a permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in Section 16 Code of Ethics of the 2011 edition of the "National Association of State Boards of Geology (ASBOG) Model Rules and Regulations", which is hereby incorporated by reference.

**R156-76-601. Seal Requirements.**

(1) In accordance with Section 58-76-601, the seal design and implementation shall be:

(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 "Licensed Professional Geologist";

(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 geologic map, cross-section, sketch, drawing, plan, or report prepared, 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; and

(f) copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date are permitted, if the seal, signature and date is clearly recognizable.

**KEY: licensing, professional geologists, geology**

**November 7, 2016 58-1-106(1)(a)**

**Notice of Continuation February 21, 2012 58-1-202(1)(a)**

**58-76-101**

**R251. Corrections, Administration.****R251-108. Adjudicative Proceedings.****R251-108-1. Purpose and Authority.**

(1) The purpose of this rule is to establish a procedure by which informal adjudicative proceedings shall be conducted as a result of a notice of agency action, or a request by a person for agency action regarding Department rules, orders, policies or procedures. This rule shall not apply to internal personnel actions conducted within the Department.

(2) This rule is authorized by Sections 63G-3-201, 63G-4-202, 63G-4-203, and 64-13-10, of the Utah Code.

**R251-108-2. Definitions.**

(1) "Adjudicative proceeding" means a departmental action or proceeding.

(2) "Department" means Department of Corrections.

(3) "Hearing" means an adjudicative proceeding which may include not only a face-to-face meeting, but also a proceeding/meeting conducted by telephone, television or other electronic means.

(4) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

(5) "Personnel actions" means any administrative hearings, grievance proceedings and dispositions, staff disciplinary process, promotions, demotions, transfers, or terminations within the department.

(6) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding; if fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

(7) "Petition" means a request for the department to determine the legality of agency action or the applicability of policies, procedures, rules, or regulations relating to agency actions associated with the governing of persons or entities outside the Department.

**R251-108-3. Policy.**

It is the policy of the Department that:

(1) all adjudicative proceedings not exempted under the provisions of Section 63G-4-202, of the Utah Code, shall be informal;

(2) upon receipt of a petition, the Department shall conduct an informal hearing regarding its actions or the applicability of Department policies, rules, orders or procedures that relate to particular actions;

(3) the Department shall provide forms and instructions for persons or entities who request a hearing;

(4) hearings shall be held in accordance with procedures outlined in Section 63G-4-203, of the Utah Code;

(5) the provisions of this rule do not affect any legal remedies otherwise available to a person or an entity to:

(a) compel the Department to take action; or

(b) challenge a rule of the Department;

(6) the provisions of this rule do not preclude the Department, or the presiding officer, prior to or during an adjudicative proceeding, from requesting or ordering conferences with parties and interested persons to:

(a) encourage settlement;

(b) clarify the issues;

(c) simplify the evidence;

(d) expedite the proceedings; or

(e) grant summary judgment or a timely motion to dismiss;

(7) a presiding officer may lengthen or shorten any time period prescribed in this rule, with the exception of those time periods established in Title 63G, Chapter 4, of the Utah Code,

applicable to this rule;

(8) the Executive Director/designee shall appoint a presiding officer to consider a petition within five working days after its receipt;

(9) the presiding officer shall conduct a hearing regarding allegations contained in the petition within 30 working days after notification by the Executive Director;

(10) the presiding officer shall issue a ruling subject to the final approval of the Executive Director within 15 working days following the hearing and forward a copy of same by certified mail to the petitioner;

(11) the petition and a copy of the ruling shall be retained in the Department's records for a minimum of two years;

(12) the ruling issued by the presiding officer terminates the informal adjudicative proceeding process; and

(13) appeals shall be submitted to a court of competent jurisdiction as outlined in Sections 63G-4-401 and 402.

**KEY: corrections, administrative procedures**

**April 9, 2012**

**63G-3-201**

**Notice of Continuation November 14, 2016**

**63G-4-202**

**63G-4-203**

**R270. Crime Victim Reparations, Administration.****R270-1. Award and Reparation Standards.****R270-1-1. Authority and Purpose.**

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

**R270-1-2. Definitions.**

(1) Terms used in this rule are found in Section 63M-7-502.

(2) In addition:

(a) "APRN" means Advanced Practice Registered Nurse;

(b) "DOPL" means Utah Department of Commerce, Division of Professional and Occupational Licensing;

(c) "primary victim" means a victim who has been directly injured by criminal conduct;

(d) "program" means the Victim Services Grant Program, authorized under Section 63M-7-506(1)(i), which allocates money for other victim services once a sufficient reserve has been established for reparations claims; and

(e) "secondary victim" means a victim who is not a primary victim but who has a relationship with the victim and was traumatically affected by the criminally injurious conduct that occurred to the victim, including an immediate family member of a victim such as a spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian or other person who the reparations officer reasonably determines bears an equally significant relationship to the primary victim.

**R270-1-3. Funeral and Burial Award.**

(1) Pursuant to Subsection 63M-7-511(4)(f), total award for funeral and burial expenses is \$7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

(2) Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the \$7,000.

(3) Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

(a) Three days in-state

(b) Five days out-of-state

(4) When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

**R270-1-4. Negligent Homicide and Hit and Run Claims.**

(1) Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).

(2) Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

**R270-1-5. Counseling Awards.**

(1) Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

(a) The reparation officer shall approve a standardized treatment plan.

(b) The cost of initial evaluation and testing may not exceed \$300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

(c)(i) Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual and/or group counseling

sessions or \$2,500 maximum mental health counseling award.

(ii) Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

(d) All other secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual and/or group counseling sessions or \$1,250 maximum mental health counseling award.

(e) Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

(f) Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

(2) In-patient hospitalization shall only be considered for primary victims when the treatment has been recommended by a licensed therapist in life-threatening situations. Acute in-patient hospitalization shall not exceed \$600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

(3) Residential and day treatment shall only be considered for primary victims when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. Residential treatment shall not exceed \$300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed \$200 per day and will be capped at \$10,000. These charges will be considered payment in full to the provider. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

(4) Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

(5) The office shall not pay for treatment for an offender related to the perpetration of the criminally injurious conduct. Reparations officers shall establish a reasonable percentage regarding victimization treatment for outpatient, inpatient, residential and day treatment on a case by case basis upon review of the mental health treatment plan and treatment records.

(6) Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the DOPL, working under the supervision of a supervisor approved by the DOPL. Student interns otherwise eligible under Subsection 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

(7) Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

(8) The following maximum amounts shall be payable for mental health counseling:

(a) up to \$130 per hour for individual and family therapy performed by licensed psychiatrists, and up to \$65 per hour for group therapy;

(b) up to \$90 per hour for individual and family therapy performed by licensed psychologists and up to \$45 per hour for group therapy;

(c) up to \$70 per hour for individual and family therapy performed by a licensed master's level therapist or an APRN, and up to \$35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

(9) Chemical dependency specific treatment will not be compensated unless the reparations officer determines that it is directly related to the crime. The board may review extenuating circumstance cases.

#### **R270-1-6. Attorney Fees.**

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When award denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

#### **R270-1-7. Reparation Awards.**

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the fund.

#### **R270-1-8. Abortion.**

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-331 shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

#### **R270-1-9. Emergency Awards.**

Pursuant to Section 63M-7-522, emergency awards up to \$1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

#### **R270-1-10. Loss of Earnings.**

(1) Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

(2) Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The board may review extenuating circumstances on loss of earnings claims for the purpose of consideration and authorization of extensions beyond set limits.

#### **R270-1-11. Moving, Transportation Expenses.**

(1) Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to \$1,000. Board approval is needed where extenuating circumstances exist.

(2) Transportation expenses up to \$1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The board may approve travel expenses in excess of \$1000 where extenuating circumstances exist.

#### **R270-1-12. Collateral Source.**

(1) Money from the fund shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

(2) Money from the fund shall be used before money from the Utah Medical Assistance Program, established in Section 26-18-10, when considering allowable benefits for victims of violent crime.

#### **R270-1-13. Record Retention.**

(1) Retention of the UOVC annual report and crime victim case files shall be as follows:

(2) Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

(3) Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to the Utah Department of Administrative Services, Division of Archives and Records Service. Case files will be retained in the State Records Center for 99 years and then destroyed.

#### **R270-1-14. Awards.**

(1) Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the reparations officer shall pay the bills by the date of service. The reparations officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the reparations officer shall determine payment on a percentage basis.

(2) Awards will only be granted for costs the reparations officer determines are directly related to or resulting from criminally injurious conduct.

#### **R270-1-15. Essential Personal Property.**

(1) Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

(2) The reparations officer may allow up to \$5000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of \$5000 where extenuating circumstances exist.

(3) The reparations officer may allow up to \$1500 for essential personal property not included in Subsection (B) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential personal property in excess of \$1500 where extenuating circumstances exist.

#### **R270-1-16. Subrogation.**

(1) Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the fund and will not be credited toward a particular victim or claimant award amount.

(2) Pursuant to Subsections 63M-7-519(2), in such instances where a settlement against a third party appears imminent, the director may reduce by up to 33% the lesser of; (a) the amount paid by the state; or (b) the amount of the

settlement. Reduction in excess of 33% shall be determined by the board with the concurrence of the director.

**R270-1-17. Unjust Enrichment.**

Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

(1) Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

(2) Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

(3) Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

(4) Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

(5) Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

**R270-1-18. Prescription or Over-the-Counter Medications.**

(1) Reimbursement of prescription or over-the-counter medications and/or medication management services used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

(2) Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

(3) Medication management rates shall be limited to a maximum of \$62.50 per thirty minute session.

**R270-1-19. Peer Review Committee.**

A volunteer Peer Review Committee may be established to review issues and/or provide input to office staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the board by written internal policy and procedure.

**R270-1-20. Medical Awards.**

Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

(1) All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

(2) The reparations officer reserves the right to audit any and all billings associated with medical care.

(3) The reparations officer will not pay any interest, finance, or collection fees as part of the award.

(4)(i) If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, the office shall pay 70% of billed charges for eligible medical bills.

(ii) If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, the office shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance

agreement.

(iii) This rule does not apply to expenses governed by R270-1-5 or R270-1-23.

(5) This rule supersedes any other agreements regarding payment of medical bills by the office.

(6) Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

**R270-1-21. Misconduct.**

Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the reparations officers shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based. Reparations officers shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

**R270-1-22. Three Year Limitation.**

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the office. Reparations officers may extend claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

**R270-1-23. Sexual Assault Forensic Examinations.**

Pursuant to Subsections 63M-7-502(20) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the office in the amount of up to \$750.00 for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, the office may also pay for the cost of medication and/or pharmacological management and consultation provided for the purpose of obtaining free medications and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed \$350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

(1) A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

(2) Victims shall not be charged for sexual assault forensic examinations.

(3) Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

(4) The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

(5) The agency may reimburse licensed medical personnel

trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

(6) The office may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

(7) A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

(8) The application or billing for the sexual assault forensic examination must be submitted to the office within one year of the examination.

(9) The billing for the sexual assault forensic examination shall:

(a) identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

(b) indicate the claim is for a sexual assault forensic examination; and

(c) itemize services and fees for services.

(10) All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before money in the fund is used. Pursuant to Subsection 63M-7-513(5), the director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

(11) Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

(12) Restitution for the cost of the sexual assault forensic examination may be pursued by the office.

(13) Payment for sexual assault forensic examinations shall be considered for the following:

(a) Fees for the collection of evidence, for forensic documentation only, to include:

(i) history;

(ii) physical; and

(iii) collection of specimens and wet mount for sperm.

(b) Emergency department services to include:

(i) emergency room, clinic room or office room fee;

(ii) cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

(iii) serum blood test for pregnancy;

(iv) morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

(v) treatment for the prevention of sexually transmitted disease up to four weeks.

(14) The victim of a sexual assault that is requesting payment by the Office for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the office.

#### **R270-1-24. Loss of Support Awards.**

(1) Pursuant to Subsection 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

(2) Except as provided in R270-1-24(3), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

(3) The board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

#### **R270-1-25. Victim Services.**

(1) Pursuant to Subsection 63M-7-506(1)(i), the board may authorize the program when there is a surplus of money in the fund in addition to what is necessary to pay reparation awards and associated administrative costs for the upcoming year.

(2) When the program is authorized, the board:

(a) shall determine the amount available for the program for that year;

(b) shall announce the availability of program funds

through a request for proposals or other similar competitive process approved by the board; and

(c) may establish funding priorities and shall include any priorities in the announcement of funds.

(3) Requests for funding shall be submitted on a form approved by the board.

(4) The board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The board may award less than the amount determined in R270-1-25(C)(2)(a). The decisions of the board may not be appealed.

(5) An award by the board shall not constitute a commitment for funding in future years. The board may limit funding for ongoing projects.

(6) Award recipients shall submit quarterly reports to the board on forms established by the director. The office staff shall monitor all victim services grants and provide regular reports to the board.

#### **R270-1-26. Nontraditional Cultural Services.**

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

**KEY: victim compensation, victims of crimes  
November 21, 2016 Title 63M, Chapter 7, Part 5  
Notice of Continuation June 15, 2016**

**R277. Education, Administration.****R277-109. Legislative Reporting and Accountability.****R277-109-1. 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-1-402(1), which directs the Board to establish rules and minimum standards for the public schools;

(c) Subsection 53A-1-401(1)(a), which gives the Board general control and supervision of the state's public education system for adoption and enforcement of rules;

(d) 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, and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with Section 53A-1-401.

(2) The purpose of this rule is to:

(a) require the Superintendent to create data collection plans necessary as determined by the Superintendent to fulfill statutory or Board reporting requirements; and

(b) require LEAs to submit data upon request to the Superintendent.

(3) The rule provides that LEA participation in Minimum School Program funding is conditioned upon LEAs providing complete and accurate data and information to the Superintendent and the Board.

**R277-109-2. Definitions.**

(1) "Minimum school program funds" or "MSP funds" means the state and local funds appropriated for the Minimum School Program to support educational activities in all grades Kindergarten through 12th grade, including the Basic State-Supported School Program, Related to Basic Program, the State-Supported Voted and Board Leeway Levy Programs, and other programs or allocations appropriated by the Legislature in Title 53A, Chapter 17a, Minimum School Program Act.

(2) "Statutory or Board reporting requirement" means a reporting requirement as described in:

(a) the Utah Code or legislative intent as documented by legislative records; or

(b) Board rule.

**R277-109-3. Board Direction to Superintendent and LEA Appeal Process.**

(1) The Superintendent shall, in consultation with LEAs, collect data and prepare data collection reports or plans, as the Board directs or as the Superintendent deems necessary, to fulfill statutory or Board reporting requirements.

(2) The Superintendent is authorized by the Board to assist LEAs to fulfill reporting requests and to complete accountability or reporting plans.

(3) The Superintendent may sanction an LEA, if necessary, if the LEA fails to provide required data or reports by withholding MSP funds due to the LEA's failure to provide complete and accurate data or reports as requested.

(4) The Superintendent shall provide adequate notice to LEAs of reporting requirements and procedures for providing data in requested formats.

(5) If an LEA does not comply with a data program request or requirement, the Superintendent shall provide adequate and timely notice to the LEA that data was not submitted accurately and completely and LEA has 30 days to respond to the Superintendent's request for data or a required data report.

(6) The Superintendent may impose sanctions for noncompliance up to and including the withholding of MSP funds directly related to the data collection or reporting requirement.

(7) The Superintendent may withhold the program funds related to the requested data report or reporting requirement beginning with the next MSP transfer or beginning with subsequent MSP transfers including MSP funding for a subsequent fiscal year.

(8) An LEA may appeal to the Board in writing the Superintendent's decision to withhold program funds within 10 calendar days.

(9) The Board shall respond to the LEA within 30 calendar days.

(10) The Board's response is the final administrative action.

**KEY: reporting, accountability  
November 7, 2016**

**Art X Sec 3  
Notice of Continuation September 15, 2016 53A-1-402(1)  
53A-1-401(1)(a)  
53A-1-401**

**R277. Education, Administration.****R277-116. Audit Procedure.****R277-116-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board;

(b) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs;

(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;

(d) Subsection 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;

(e) Section 53A-1-404 which allows the Board to approve auditing standards for school boards;

(f) Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts;

(g) Subsection 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education; and

(h) Section 53A-1-401, which gives the Board authority to audit the use of state funds by an education entity that receives state funds as a distribution from the Board.

(2) The purpose of this rule is to:

(a) outline the role of the Audit Director, Superintendent, and agency in the audit process; and

(b) outline the Board's procedures for audits of agencies.

**R277-116-2. Definitions.**

(1) "Agency" means:

(a) an entity governed by the Board;

(b) an LEA; or

(c) a sub-recipient.

(2) "Audit committee" means a standing committee of members appointed by the Board.

(3) "Audit Director" means the person who:

(a) directs the audit program of the Board;

(b) is appointed by and reports to the audit committee; and

(c) is independent of the agencies subject to Board audit.

(4) "Audit plan" means a prioritized list of audits to be performed in the audit program within a specified period of time that is reviewed, approved, and adopted at least annually.

(5) "Audit program" means a department that provides internal audit services for the Board that is directed by the Audit Director.

(6) "An entity governed by the Board" means the Board, SCSB, or USDB.

(7) "Draft audit report" means a draft audit report compiled by the Audit Director that is classified as protected under Title 63G, Chapter 2, Part 3, Section 305, Protected records.

(8) "Education entity" means the same as that term is defined in Section 53A-1-401.

(9) "Final audit report" means a draft audit report that is approved by the audit committee and the Board as a final audit report that is classified as public under Title 63G, Chapter 2, Part 3, Section 301, Public records.

(10) "Sub-recipient" means any entity that receives funds from an entity governed by the Board.

**R277-116-3. Audit Director Authority and Responsibilities.**

(1) The Audit Director shall:

(a) direct the audit program:

(i) as approved by the Board and audit committee by objectively evaluating the effectiveness and efficiency of the

operations of the agency being audited;

(ii) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and

(iii) as otherwise required by the Board;

(b) ensure that collectively the audit department possesses the knowledge, skills, and experience essential to the practices of the profession and are proficient in applying internal auditing standards, procedures, and techniques;

(c) employ:

(i) a sufficient number of professional and support staff to implement an effective internal audit program; and

(ii) audit staff who are qualified in disciplines that include:

(A) accounting;

(B) business management;

(C) public administration;

(D) human resource management;

(E) economics;

(F) finance;

(G) statistics;

(H) electronic data processing; or

(I) engineering;

(d) inform the audit committee if additional professional and support staff are necessary to implement an effective internal audit program;

(e) base compensation, training, job tenure, and advancement of internal auditing staff on job performance;

(f) propose audit rules, policies, and amendments, for approval and adoption by the Board that maintain staff independence from operational and management responsibilities that would impair staff's ability to make independent audits of an agency;

(g) develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments, audits, and budget;

(h) perform an audit of a special program, activity, function, or organizational unit of an agency at the direction of the Board or the audit committee with one or more objectives, including:

(i) to verify the accuracy and reliability of agency records;

(ii) to assess compliance with management policies, plans, procedures, and regulations;

(iii) to assess compliance with applicable laws, rules, and regulations;

(iv) to evaluate the efficient and effective use of agency resources;

(v) to verify the appropriate protection of agency assets; and

(vi) review and evaluate internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the state agency;

(i) determine the assignment and scope of the audits;

(j) periodically discuss relevant matters with the audit committee including whether there are any restrictions on the scope of the audits;

(k) submit draft audit reports directly to the Board and to the audit committee;

(l) receive comments from the Board and responses from the Superintendent on the draft audit report;

(m) edit draft audit report based upon the comments and responses received;

(n) resubmit a draft audit report to the Board and audit committee;

(i) after receipt of comments from the Board and responses from the Superintendent; and

(ii) until a draft audit report is approved and adopted as a final audit report by the Board;

(o) report monthly to the audit committee, or as otherwise

directed by the audit committee, including:

- (i) reviewing current audits being performed both internally and externally;
- (ii) the scope of the internal and external audits;
- (iii) status of internal and external audits;
- (iv) follow up draft audit reports; and
- (v) draft audit reports for final review and recommendation;
- (p) conduct an annual quality assurance review of the audit program with the audit committee;
- (q) personally or through a designee, report quarterly to the Board, or as otherwise directed by the Board;
- (r) personally or through a designee, attend all Board meetings;
- (s) report to the Board, within a reasonable time of discovering, issues that have the potential of exposing the Board, Superintendent, or an agency to liability or litigation;
- (t) maintain the classification of any public record consistent with GRAMA;
- (u) be subject to the same penalties under GRAMA as the custodian of a public record; and
- (v) ensure that significant audit matters that cannot be appropriately addressed by the audit program are referred to either the Office of Legislative Auditor General or the Office of the State Auditor.

(2) The Audit Director may contract with an LEA or other education entity to provide internal audit services to the LEA or other education entity if the contract is approved by the audit committee in accordance with Board contract policies.

#### **R277-116-4. Superintendent Authority and Responsibilities.**

The Superintendent shall:

- (1) provide resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;
- (2) facilitate communications with those charged with governance, management, and staff as requested by the Audit Director or the audit committee to ensure the access necessary to perform an audit;
- (3) ensure access to all personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties;
- (4) notify the Audit Director of external audits of entities governed by the Board;
- (5) notify the agency that the Audit Director shall be the liaison for an external audit; and
- (6) support the audit program as otherwise requested by the audit committee or Audit Director.

#### **R277-116-5. Agency Authority and Responsibilities.**

The agency shall wholly cooperate and provide the Audit Director and the internal audit staff all:

- (1) necessary access to those charged with governance, management, and staff; and
- (2) personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties.

#### **R277-116-6. Audit Plans.**

- (1) The audit plan prepared by the Audit Director shall:
  - (a) identify the individual audits to be conducted during each year;
  - (b) identify the related resources to be devoted to each of the respective audits;
  - (c) ensure that internal controls are reviewed periodically as determined by the Board or by the audit committee; and
  - (d) ensure that audits that evaluate the efficient and effective use of agency resources are adequately represented in the audit plan.

(2) Upon request, the Audit Director shall make a copy of the approved and adopted audit plan available to the state auditor, legislative auditor, or other appropriate external auditors to assist in planning and coordination of any external financial, compliance, electronic data processing, or performance audit.

#### **R277-116-7. Audit Process.**

(1) The Audit Director shall develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Audit Director shall implement the audit plan.

(3) As requested by the audit committee or Audit Director, the Superintendent shall establish the audit program.

(4) The agency shall provide all information to the Audit Director and audit staff for the audit to be timely conducted.

(5) After conducting an audit, the Audit Director shall submit a draft audit report to:

- (a) the audit committee;
  - (b) the Board; and
  - (c) the Superintendent for response or comment.
- (6) Within fourteen days of the Audit Director's submission of the draft audit report to the Board and audit committee, the Superintendent shall either:
- (a) provide a written response or comment to the Board, audit committee, and Audit Director to the draft audit report; or
  - (b) file a written request for an extension to the audit committee setting forth:
    - (i) the steps necessary to investigate and prepare a response to the draft audit report;
    - (ii) the time necessary to perform each step; and
    - (iii) the latest date that the Superintendent's written response or comment will be given to the Board, audit committee and Audit Director.

(7) Upon receiving written response and comment from the Superintendent, the Audit Director shall:

- (a) incorporate into the draft audit report the written responses and comments, if any, received from the Board, the audit committee, and the Superintendent; and
  - (b) submit the amended draft audit report to the audit committee for recommendation.
- (8) The audit committee may:
- (a) recommend an amended draft audit report for approval and adoption; or
  - (b) send the amended draft audit report back to the Audit Director with instructions for additional review.
- (9) Upon recommendation from the audit committee on the amended draft audit report, the Board may:
- (a) approve and adopt an amended draft audit report as the final audit report; or
  - (b) send the amended draft audit report back to the audit committee with instructions for additional review.

#### **R277-116-8. Audit Reports.**

(1) An audit report prepared by the Audit Director and staff shall be based upon audits of agency programs, activities, and functions that include:

- (a) findings based upon the audit scope; and
- (b) one or more of the following objectives:
  - (i) verification of the accuracy and reliability of agency records;
  - (ii) assessment of an agency's compliance with management policies, plans, procedures, and regulations;
  - (iii) assessment of an agency's compliance with applicable laws, rules, and regulations;
  - (iv) evaluation of the efficient and effective use of agency resources;
  - (v) verification of the appropriate protection of agency

assets;

(vi) furnishing independent analyses, appraisals, and recommendations that may, depending upon the audit scope, identify:

(A) the adequacy of an agency's systems of internal control;

(B) the efficiency and effectiveness of agency management in carrying out assigned responsibilities; and

(C) the agency's compliance with applicable laws, rules, and regulations;

(vii) review and evaluation of internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the agency; and

(viii) identification of abuse, illegal acts, errors, omissions, or conflicts of interest.

(2) An audit report prepared by the Audit Director and staff shall include a statement that the audit was conducted according to International Standards for the Professional Practice of Internal Auditing.

(3) The Audit Director shall provide, upon written request, a copy of an audit report to the Office of Legislative Auditor General or the Office of the State Auditor.

(4) The Audit Director shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

**KEY: educational administration**

**November 7, 2016**

**Notice of Continuation September 15, 2016**

**Art X Sec 3**

**53A-1-401**

**53A-1-402(1)(e)**

**53A-1-405**

**53A-17a-147(2)**

**63I-5-101 through 401**

**R277. Education, Administration.****R277-404. Requirements for Assessments of Student Achievement.****R277-404-1. 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) Sections 53A-1-603 through 53A-1-611, which direct the Board to adopt rules for the maintenance and administration of U-PASS;
  - (c) Subsection 53A-15-1403(9)(b), which requires the Board to adopt rules to establish a statewide procedure for excusing a student from taking certain assessments; and
  - (d) 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 consistent definitions; and
  - (b) assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

**R277-404-2. Definitions.**

- (1) "Benchmark reading assessment" means the Dynamic Indicators of Basic Early Literacy Skills or DIBELS assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.
- (2) "College readiness assessment" means the American College Testing exam, or ACT.
- (3) "English Learner" or "EL" student" means a student who is learning in English as a second language.
- (4) "English language proficiency assessment" means the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.
- (5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.
- (6) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.
- (7) "Online writing assessment" means the SAGE writing portion of the SAGE English Language Arts Assessment that measures writing performance for a student in grades 3 through 11.
- (8) "Pre-post assessment" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency that has occurred during the school year.
- (9) "State required assessment" means an assessment described in Subsection 53A-15-1403(9)(a).
- (10) "Student Assessment of Growth and Excellence" or "SAGE" means a computer adaptive assessment for:
- (a) English language arts grades 3 through 11;
  - (b) mathematics:
    - (i) grades 3 through 8; and
    - (ii) Secondary I, II, and III; and
  - (c) science:
    - (i) grades 4 through 8;
    - (ii) earth science;
    - (iii) biology;
    - (iv) physics; and
    - (v) chemistry.
- (11) "Section 504 accommodation plan" means a plan:
- (a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12) "Summative adaptive assessment" means the SAGE assessment, which:

- (a) is administered upon completion of instruction to assess a student's achievement;
- (b) is administered online under the direct supervision of a licensed educator;
- (c) is designed to identify student achievement on the standards for the respective grade and course; and
- (d) measures a range of student ability, within the grade or course level standards the student was taught, by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

(13)(a) "Utah alternate assessment" means an assessment instrument:

- (i) for a student in special education with a disability so severe the student is not able to participate in the components of U-PASS even with an assessment accommodation or modification; and
  - (ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.
- (b) "Utah alternate assessment" means:
- (i) for science, the Utah Alternate Assessment (UAA); and
  - (ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).
- (14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:
- (a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and
  - (b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.
- (15) "Utah Performance Assessment System for Students" or "U-PASS" means:
- (a) the summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;
  - (b) the online writing assessment in grades 3 through 11;
  - (c) the college readiness assessment; and
  - (d) the summative assessment of a student in grade 3 to measure reading grade level using the end of year benchmark reading assessment.

**R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.**

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, January 7, 2016, which establishes:

- (a) the purpose of testing;
- (b) the state assessments to which the policy applies;
- (c) teaching practices before assessment occurs;
- (d) required procedures for after an assessment is complete and for providing assessment results;
- (e) unethical practices;
- (f) accountability for ethical test administration;
- (g) procedures related to ethics violations; and
- (h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

( )  
<http://www.schools.utah.gov/assessment/Directors/Resources/EthicsPolicy.aspx>; and

(b) The Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

**R277-404-4. Assessment System - Superintendent**

**Responsibilities.**

(1) The Board's comprehensive assessment system for all students in grades K-12 includes:

- (a) the U-PASS assessments;
- (b) pre-post kindergarten assessment for a kindergarten student as determined by the LEA;
- (c) the benchmark reading assessment;
- (d) the Utah alternate assessment, for an eligible student with a disability;
- (e) the English language proficiency assessment;
- (f) the National Assessment of Educational Progress (NAEP); and
- (g) reporting by the Superintendent of U-PASS results.

(2) The report required by Subsection (1)(g) shall include:

- (a) student performance based on information that is disaggregated with respect to race, ethnicity, gender, English proficiency, eligibility for special education services, and free or reduced price school lunch status;
  - (b) security features to maintain the integrity of the system, including statewide uniform assessment dates, assessment administration protocols, and training; and
  - (c) summative adaptive assessment results disseminated by the Superintendent to an LEA, parent, and other, as appropriate, consistent with FERPA.
- (3) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.
- (4) The Superintendent shall designate a testing schedule for each state-required assessment and publish the testing window dates on the Board's website before the beginning of the school year.

**R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.**

(1) Except as provided in Section 53A-1-603, an LEA shall develop a comprehensive assessment system plan to include the assessments described in Subsection R277-404-5(1).

(2) The plan shall include:

- (a) the dates that the LEA will administer each required assessment;
- (b) if the LEA decided to offer its grade 11 students only the college readiness assessment and not the SAGE assessment;
- (c) professional development for an educator to fully implement the assessment system;
- (d) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics;
- (e) training for an educator and an appropriate paraprofessional to utilize assessment results effectively to inform instruction; and
- (f) adequate oversight of test administration to ensure compliance with Section 53A-1-603 as follows:

(i) an LEA or online provider shall test all enrolled students unless a student has a written parental excuse under Subsection 53A-15-1403(9);

(ii) a student participating in the Statewide Online Education Program is assessed consistent with Section 53A-15-1210; and

(iii) a third party vendor or contractor may not administer or supervise U-PASS.

(3) An LEA shall submit the plan to the Superintendent by September 15 annually.

(4) At least once each school year, an LEA shall provide professional development for all educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including educator responsibility for assessment security and proper professional practices.

(5) LEA assessment staff shall use the Standard Test

Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(6) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(7) An LEA educator or trained employee shall administer assessments required under R277-404-5 consistent with the testing schedule published on the Board's website.

(8) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(9)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for summative adaptive assessment administration for courses taught face to face or online.

**R277-404-6. School Responsibilities.**

(1) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

- (a) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or
- (b) whether the student may advance to the next grade level.

(2) An LEA and school shall require an educator and assessment administrator and proctor to individually sign the Testing Ethics signature page provided by Superintendent acknowledging or assuring that the educator administers assessments consistent with ethics and protocol requirements.

(3) All educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) All educators and assessment administrators and proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

(5) A student's IEP, EL, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

**R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.**

(1)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(2) An LEA shall administer state required assessments to all students unless:

(a) the Utah alternate assessment is approved for specific students consistent with federal law and as specified in the student's IEP; or

(b) students are excused by a parent or guardian under Section 53A-15-1403(9) and as provided in this rule.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), upon exercising the right to exempt a child from a state required assessment under this provision, an LEA may not impose an adverse consequence on a child as a result of the exercise of rights under this provision.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53A-13-109.5 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53A-13-109.5(2), and may not graduate without successfully completing the requirements of Sections 53A-13-109.5 and R277-700-8.

(4)(a) In order to exercise the right to exempt a child from a state required assessment under this provision and insure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis and at least one day prior to beginning of the assessment.

(b) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA's specific form; and

(ii) the LEA's specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) School grading, teacher evaluations, and student progress reports or grades may not be negatively impacted by students excused from taking a state required assessment.

(7) Any assessment that is not a state required assessment, the administration of the assessments, and the consequence of taking or failing to take the assessments is governed by policy adopted by each LEA.

(8) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(9) An LEA may not reward a student for taking a state required assessment.

**R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a standardized assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response or any other standardized assessment material at any time in a way that alters the student's intended response;

(d) use any prior form of any standardized assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA standardized assessment policy or

procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a state required assessment;

(g) fail to administer a state required assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

**R277-404-9. Data Exchanges.**

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each assessment.

(5) An LEA shall ensure that all summative testing data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Consistent with Utah law, the Superintendent shall return assessment results from all required assessments to the school before the end of the school year.

**KEY: assessments, student achievements**

**August 11, 2016**

**Art X Sec 3**

**Notice of Continuation November 12, 2016 through 53A-1-611**

**53A-1-401(3)**

**R277. Education, Administration.****R277-503. Licensing Routes.****R277-503-1. Definitions.**

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

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

C. "Career and technical education (CTE)" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree. CTE programs provide all students a continuous education system, driven by a SEOP/plan for college and career readiness, through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Categories include agriculture; business; family and consumer sciences; health science; information technology; marketing; skilled and technical sciences; technology and engineering; and work-based learning, consistent with R277-916.

D. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

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

F. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

G. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

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

I. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by an LEA in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements.

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

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

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

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

(3) additional requirements established by law or rule.

L. "Level 3 license" means a Utah professional educator license issued by the Board to an educator who holds a current Utah Level 2 license and has also received National Board

Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

M. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

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

O. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

P. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.

Q. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

- (1) Middle States Commission on Higher Education;
- (2) New England Association of Schools and Colleges;
- (3) North Central Association Commission on Accreditation and School Improvement;
- (4) Northwest Accreditation Commission;
- (5) Southern Association of Colleges and Schools; and
- (6) Western Association of Schools and colleges: Senior College Commission.

R. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings.

S. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

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

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

**R277-503-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

**R277-503-3. USOE Licensing Eligibility.**

A. Traditional college/university license - A license

applicant shall:

(1) have completed an approved college/university teacher preparation program,

(2) have been recommended for licensing, and

(3) have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall:

(a) have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; or

(2) have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) while participating in an alternative licensing program, be approved for employment under an ARL license. An ARL program may not exceed three school years.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area shall submit passing score(s) on a rigorous Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

D. For each endorsement in an NCLB core academic area to be posted on the license, teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available.

E. An applicant shall submit electronic or original documentation of passing score(s) on a rigorous Board-designated content test to the USOE.

F. Any licensure candidate recommended for a Utah Level 1 license who does not submit a passing score on the test designated in R277-503-3C shall not be eligible for licensure until achieving a passing score.

#### **R277-503-4. Licensing Routes.**

Applicants who seek Utah educator licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

(a) CAEP; or

(b) NCATE; or

(c) TEAC; and

(2) As of January 1, 2012, approved by USOE to recommend for licensure in the license area or endorsements or both in designated areas.

B. An applicant that meets the eligibility requirements in R277-503-3B and is assigned to teach exclusively in an online setting shall be eligible to begin the ARL program but upon completion of the ARL program shall earn a license area of concentration that is restricted to providing instruction in an online setting.

C. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4.

(2) To be eligible to begin the ARL program, applicants for school positions requiring a secondary license area of concentration shall hold at least a bachelors degree and:

(a) a degree major or major equivalent directly related to the assignment; or

(b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, applicants for CTE school positions that do not meet the requirements in R277-503-4C(2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

(a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;

(b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;

(c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;

(d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;

(e) has final responsibility for determining student grades and credit for the courses taught by the applicant; and

(f) is assigned in:

(i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

(5) Licensing by Agreement

(a) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s) and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) An applicant who has been employed as an educator under a competency-based license or as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

(i) The applicant has had at least three years of experience as an educator or paraeducator;

(ii) The applicant's experience has been successful based on documentation from the LEA; and

(iii) The USOE and employing LEA has approved the applicant's experience in lieu of pedagogy course(s).

(f) The employing LEA shall assign a trained mentor to work with the applicant for licensing by agreement.

(g) The LEA shall supervise and assess the license applicant's classroom performance for a minimum of one school year if the applicant teaches full-time or a minimum of two school years if the applicant teaches part-time. The LEA may request assistance from an institution of higher education or the USOE in monitoring and assessing the applicant.

(h) The LEA shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The LEA may request assistance in this assessment; and

(i) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the LEA.

(j) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(6) USOE Licensing by Competency

(a) An LEA employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the LEA who satisfies the minimum requirements of R277-503-3.

(b) An employing LEA, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing LEA shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The LEA shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time or two-year part-time teaching experience.

(e) The LEA shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the LEA and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete and satisfactory, the USOE shall recommend the applicant for a Level 1 educator license.

(7) USOE ARL candidates under R277-503-4C(4) shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.

(8) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(9) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

D. LEA specific competency-based licenses:

(1) An LEA may apply to the Board for a Level 1 competency-based license to fill a position in the LEA. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the rigorous state core academic subject test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches at the USOE established passing score.

(4) The application for the Level 1 competency-based

license from the LEA for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) The written copy of the Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9) An LEA may change the assignment of a competency-based license holder; notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license despite the limitations of R277-504-3D.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(15) If an individual holds a Utah license, the application shall be subject to additional USOE review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the LEA specific license.

(16) If the application is not approved based on a USOE review of the criteria provided in R277-503-4C(11), appropriate licensure procedures shall be recommended to the requesting LEA. The applicant may be required to renew an expired license, apply for an endorsement, pass appropriate Board approved tests consistent with R277-503-3C, obtain an additional area of concentration, apply to Alternative Route to Licensure, or satisfy other reasonable standards.

**R277-503-5. Endorsement Routes.**

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist. The

USOE shall be responsible for final recommendation and approval; or

(3) a USOE-approved Utah institution of higher education or Utah LEA-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE.

(a) The university or LEA shall be responsible for final review and recommendation.

(b) The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and USOE authorization.

**R277-503-6. Additional Provisions.**

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE, TEAC, and CAEP.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

**KEY: teachers, alternative licensing**

**June 9, 2014**

**Notice of Continuation November 15, 2016 53A-1-402(1)(a)**

**Art X Sec 3  
53A-1-401(3)**

**R277. Education, Administration.****R277-507. Driver Education Endorsement.****R277-507-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.
- C. "Level 1 License" means a license issued upon completion of an approved educator preparation program or an alternative preparation program or pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule.
- D. "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.
- E. "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.
- F. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.
- G. "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter 6, Part 2, Compact of Interstate Qualification of Educational Personnel, which is administered through NASDTEC and which provides for reciprocity of educator licenses among states.
- H. "USOE" means the Utah State Office of Education.

**R277-507-2. Authority and Purpose.**

- A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests the general control and supervision of the public school in the State Board of Education, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensure of educators, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-13-208 which directs the Board to establish procedures and standards to license teachers of driver education classes as driver license examiners.
- B. The purpose of this rule is to establish standards and procedures for high school teachers to qualify for the driver education endorsement.

**R277-507-3. Endorsement Requirements.**

- A. The driver education endorsement shall be added to the Level 1, 2, or 3 license provided:
- (1) the individual has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following: Secondary Education, Special Education and/or School Counselor;
  - (2) the individual has a valid Utah automobile operator's license; and
  - (3) the beginning teacher has no convictions for a moving violation or chargeable accident on record for which a driver license was suspended or revoked for the two year period immediately prior to employment.
- B. In order for a high school driver education teacher to be certified as a driver license examiner by the Driver License Division of the Department of Public Safety, the teacher shall first be licensed and endorsed by the USOE.
- C. A high school driver education teacher shall have professional preparation which includes the following:
- (1) sixteen (16) semester hours in the area of driver and safety education;
  - (2) of the 16 hours required:
    - (a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction; and

(b) a minimum of three (3) semester hours shall be selected from areas of related safety work; and

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training.

D. A high school driver education teacher after meeting the criteria of Subsection 3, shall obtain a valid and current certificate from the Driver License Division to administer knowledge and driving skills test, as required by and specified in 53A-13-208.

**R277-507-4. Driver Education Program Standards.**

The teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:

- (1) structuring, implementing, identifying and developing support materials related to regular classroom, multimedia, driving simulation, off-street multiple car driving range, and on-street experiences;
- (2) assisting students in examining and clarifying their attitudes and values about safety;
- (3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;
- (4) understanding and explaining the interaction of all highway transportation system elements;
- (5) initiating emergency procedures under varying circumstances;
- (6) motor vehicle operation and on-street instruction;
- (7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;
- (8) understanding and explaining due process in the legal system;
- (9) communicating effectively with federal, state, and local agencies concerning safety issues;
- (10) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and
- (11) understanding and explaining the UTAH DRIVER HANDBOOK, prepared by the Driver License Division.

**R277-507-5. Endorsement Suspension.**

- A. The driver education endorsement shall be immediately suspended and the previously-endorsed individual shall not be allowed to teach driver education following a conviction for a moving violation, alcohol-related or chargeable accident for which an individual's driver license is suspended or revoked.
- B. Once an individual's endorsement to teach has been suspended, he shall be required to maintain a driving record free of convictions for moving violations or chargeable accidents for which a driver license is suspended or revoked for a period of two years before the endorsement to teach may be reinstated.

**KEY: professional education, driver education, educator licensure****December 16, 2005****Notice of Continuation November 15, 2016 53A-1-402(1)(a)  
53A-1-401(3)  
53A-13-208****Art X Sec 3**

**R277. Education, Administration.****R277-512. Online Licensure.****R277-512-1. Definitions.**

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

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

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

C. "License" for purposes of this rule means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools consistent with Section 53A-6-103.

D. "License record" means the electronic record of license holder and license applicant personal information and credentials maintained on the CACTUS database at the USOE.

E. "License transaction" means the interactions between a license holder or applicant and the USOE or Board that result in issuance of a license, renewal of a license, or modification of a license or license record by or from the USOE.

F. "Online license transaction" means those license transactions that take place via the process maintained by the USOE contracted provider.

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

H. "Utah Professional Practices Advisory Commission" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Sections 53A-6-301 through 53A-6-307.

**R277-512-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained as license transactions change to online processes. Online licensure shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, and for school districts and charter schools.

**R277-512-3. Procedures.**

A. All current Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to all license transactions, regardless of whether the transactions occur online or by other means.

B. Educators may receive electronic or paper verifications of licensure transactions, but these shall not constitute the educator license.

C. CACTUS shall be the final repository of educator information and credentials for school districts, charter schools, and other authorized CACTUS users.

D. Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in

other wide-spread online processes.

E. USOE licensing transactions shall take place electronically.

F. Approved Utah educator preparation institutions, school districts, charter schools, and other CACTUS users shall cooperate with the USOE by using the online tools and procedures provided by the USOE for transmission of information related to licensing.

**R277-512-4. Audits.**

A. The USOE shall establish an auditing program that provides for adequate review of online licensure transactions. The purpose of audits is to ensure the accuracy, reliability, and completeness of online licensure transactions.

B. All licensure transactions may be subject to audit within one year of the completion of the transaction or at any time for cause. Audits shall be conducted by USOE staff.

C. Individuals designated by school districts and charter schools and approved by the USOE shall have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

D. Audits may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction. The license holder may be required to submit transcripts, records of participation in professional development activities, supervisor letters or endorsements, and other documentation needed to determine that the assertions of the license holder made during the license transaction were accurate and verifiable.

E. If an audit finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the audit findings shall be forwarded to the Utah Professional Practices Advisory Commission.

F. A license transaction that was completed on the basis of inaccurate information may be voided at any time with reasonable notice to the license holder.

**R277-512-5. License Applicant and License Holder Responsibilities.**

A. License applicants and license holders shall supply accurate and complete information as requested in all license transactions.

B. License applicants and license holders shall maintain files and documentation of the information provided in all license transactions for a period of one year after the completion of the license transaction.

C. A license applicant or license holder that supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by the Utah Professional Practices Advisory Commission.

**R277-512-6. Licensing Costs.**

A. The Utah legislative intent and the intent of the Board is that the licensing process should be automated and should be self-sustaining.

B. The USOE shall determine and assess licensing fees to license applicants that cover the actual and complete costs of licensing.

C. The USOE Licensing Section shall maintain accurate records and documentation of fees assessed and costs of online licensing and any USOE review responsibilities.

**R277-512-7. Licensing Records.**

A. Records of online licensure transactions shall be recorded in CACTUS.

B. License applicants shall be required to submit a social security number in order to be licensed. Social security

numbers shall be carefully protected and only individuals specifically designated by school districts/charter schools and approved by the USOE shall have access to licensing files.

C. License applicants and license holders shall update personal CACTUS information in a timely manner.

D. CACTUS records may be used by the USOE for research and other valid educational purposes.

**KEY: online, licensure**

**January 23, 2007**

**Art X Sec 3**

**Notice of Continuation November 15, 2016 53A-1-402(1)(a)**

**53A-1-401(3)**

**R277. Education, Administration.****R277-513. Teacher Leader.****KEY: teachers, leaders, qualifications  
November 7, 2016****Art X Sec 3  
53A-6-115  
53A-1-401****R277-513-1. 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-6-115, which requires the Board to:
    - (i) define the role of a teacher leader; and
    - (ii) establish the minimum criteria for a teacher to qualify as a teacher leader; 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 purpose of this rule is to:
- (a) define the role of a teacher leader; and
  - (b) establish the minimum criteria for a teacher to qualify as a teacher leader.

**R277-513-2. Definitions.**

As used in this section, "teacher" has the same meaning as that term is defined in Section 53A-6-115.

**R277-513-3. Minimum Criteria for a Teacher Leader.**

An LEA may designate a teacher as a teacher leader if the teacher:

- (1) is a level 2 or level 3 licensed teacher;
- (2) has an educator evaluation effectiveness rating of effective or highly effective for at least two years prior to being designated as a teacher leader;
- (3) demonstrates competence in working with adult learners and peers;
- (4) demonstrates consistent leadership, focused collaboration, distinguished teaching, and continued professional growth; and
- (5) is recommended by the building administrator to be designated as a teacher leader.

**R277-513-4. Roles of a Teacher Leader.**

A teacher leader's role may include:

- (1) generally supporting school-based professional learning;
- (2) training, supervising, and mentoring student teachers and new teachers;
- (3) modeling effective instructional strategies for other teachers;
- (4) serving as an instructional coach to develop effective instruction;
- (5) guiding other educators in collecting, understanding, analyzing, and interpreting student-achievement data and using those findings to improve instruction;
- (6) leading specific school improvement initiatives;
- (7) leading efforts to modify or improve curriculum;
- (8) acting as a liaison for community projects;
- (9) serving as a learning facilitator for professional learning activities; and
- (10) facilitating and coordinating professional learning communities.

**R277-513-5. LEA Teacher Leader Compensation and Accommodations.**

An LEA should:

- (1) provide a bonus, pay increase, or other monetary incentive to compensate a teacher leader for the teacher leader's time performing duties described in Section R277-513-4; and
- (2) reduce a teacher leader's classroom workload to provide the teacher leader time to perform the duties described in Section R277-513-4.

**R277. Education, Administration.****R277-600. Student Transportation Standards and Procedures.****R277-600-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public schools in the Board;

(b) Subsection 53A-1-402(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs;

(c) Sections 53A-17a-126 and 127, which provide for distribution of funds for transportation of public school students and disability standards for student bus riders;

(d) Section 53A-17a-126.5, which directs the Board to make rules to implement unsafe route grants; and

(e) 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 specify the standards under which school districts may qualify for and receive state transportation funds.

**R277-600-2. Definitions.**

(1) "ADA" means average daily attendance.

(2) "ADM" means average daily membership.

(3) "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

(4)(a) "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.

(b) All approved costs are adjusted by the Superintendent consistent with a Board-approved formula per the annual legislative transportation appropriation.

(5) "Deadhead miles" means miles traveled while operating a bus with no passengers on board.

(6) "Extended school year" or "ESY" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents.

(7) "Hazardous" means in a state of danger or potential danger, which may result in injury or death.

(8) "Local school board" means a local school district board of education.

(9) "Multipurpose passenger vehicle" or "MPV" means any motor vehicle with less than 10 passenger positions, including the driver's position, which cannot be certified as a bus.

(10) "Pupil Transportation Advisory Committee" means the committee described in Subsection 53A-17a-127(5).

(11) "Out-of-pocket expense" means gasoline, oil, and tire expenses.

(12) "Unsafe route" has the same meaning as defined in Subsection 53A-17a-126.5(1).

**R277-600-3. General Provisions.**

(1)(a) The Superintendent shall use state transportation funds to reimburse school districts for the costs reasonably related to transporting students to and from school.

(b) The Board shall define the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

(2) Allowable transportation costs are divided into two categories:

(a) A Category costs include expenditures for regular bus routes established by the school district, and approved by the state.

(b) B Category costs include other methods of transporting students to and from school.

(3) The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.

(4) The Superintendent shall approve B Category costs on a line-by-line basis after:

(a) comparing the costs submitted by a school district with the costs of alternative methods of performing the designated functions; and

(b) accounting for legislative appropriation variations.

(5) The Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs, which shall specify the methods used to calculate allowable transportation costs.

(6) The Superintendent shall develop uniform forms for the administration of the transportation program.

(7)(a) An LEA shall record all student transportation costs, including accurate mileage, minute, and trip records.

(b) An LEA may maintain records and financial worksheets during the fiscal year for audit purposes.

**R277-600-4. Eligibility.**

(1) The Superintendent shall only disburse state transportation funds for transporting eligible students.

(2) The Superintendent shall determine transportation eligibility for elementary students (k-6) and secondary students (7-12) in accordance with the mileage from home, specified in Subsections 53A-17a-127(1) and (2), to the school attended by assignment of the local school board.

(3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.

(4) A student who attends school for at least one-half day at a location other than the local school board designated school is not eligible for transportation for distances up to one and one-half miles.

(5) A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.

(6) The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

**R277-600-5. Student with Disabilities Transportation.**

(1)(a) A student with a disability shall be transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise.

(b) A school district may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

(2) A school district may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

(3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(4) During the ESY, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.

(6) The Utah Schools for the Deaf and the Blind shall provide transportation for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent.

#### **R277-600-6. Bus Route Approval.**

(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.

(b) A local school board shall provide information requested by the Superintendent prior to approval of a route.

(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(d) The Superintendent may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.

(2) The Superintendent may approve exceptions for good cause shown.

(3) A bus route shall:

- (a) traverse the most direct public route;
- (b) be reasonably cost-effective in comparison to other feasible alternatives;
- (c) provide adequate safety for students;
- (d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and
- (e) include an economically appropriate number of students.

(4)(a) The minimum number of general education students required to establish a bus route is ten.

(b) The minimum number of students with disabilities required to establish a bus route is five.

(c) A bus route may be established for fewer students upon special permission of the Superintendent.

(5) A school district shall designate safe areas for bus stops.

(6)(a) A student is responsible for the student's own transportation to bus stops up to one and one-half miles from home.

(b) A student with a disability is responsible for the student's own transportation to bus stops unless the IEP team determines otherwise.

(7)(a) A school district shall report changes made in existing routes or the addition of new routes to the Superintendent as they occur.

(b) The Superintendent shall review and may refuse to fund route changes.

(8) The Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

- (a) the route promotes efficient transportation for both districts;
- (b) the route serves a group or community of students and families rather than a single student or a single family;
- (c) the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district;

and

(d) both districts and the Superintendent maintain documentation annually of the boards' votes and the map of the approved route.

(9) A school district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

(10)(a) The Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

(b) Building construction alternatives include:

- (i) elementary double sessions;
- (ii) year-round school; and
- (iii) attendance across school district boundaries.

(11)(a) A school district may use the State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

- (i) the local school board has a policy that includes approval of trips at the appropriate administrative level;
- (ii) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;
- (iii) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is appropriate for the trip or activity; and
- (iv) the local school board has consulted with State Risk Management.

(b) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district maintains documentation that:

- (i) the routes are necessary;
- (ii) the routes are more cost-effective; or
- (iii) the routes provide greater safety for students than in-state routes.

#### **R277-600-7. Alternative Transportation.**

(1) The Superintendent shall analyze bus routes that involve a large number of deadhead miles to determine if an alternative method of transporting students is more efficient.

(2) Approved alternatives include the alternatives described in Subsections (3) through (9).

(3)(a) The costs incurred in transporting eligible pupils in a school district MPV are approved costs as long as the costs demonstrate efficiency; or

(b) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are approved costs.

(4)(a) A student may be reimbursed for the mileage to the bus stop or school, whichever is closer to the student's home.

(b) The allowance under this Subsection (4)(a) may not be less than \$0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations.

(5) A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

(6)(a) A district shall make a student mileage allowance under this Section R277-600-7 to only one student per family for each trip that is necessary for all the students within a family to attend school.

(b) If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances.

(7) If a student eligible for reimbursement under this

Section R277-600-7 or the student's parent is unable to provide private transportation, with prior approval from the Superintendent, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation.

(8)(a) A district shall measure and certify a student's mileage in school district records.

(b) A student's ADA, as entered in school records, is used to determine the student's attendance.

(9)(a) The cost incurred in providing a subsistence allowance is an approved cost under the following conditions:

(i) a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school;

(ii) payment may not exceed the Substitute Care Rate for Family Services for the current fiscal year;

(iii) adjustments for changes made in the rate during the year shall be included in the allowance; and

(iv) in addition to the reimbursement for room and board, the subsistence allowance may include the costs of up to 18 round trips per year.

(b)(i) A subsistence allowance is not available to a parent who maintains a separate home during the school year for the convenience of the family.

(ii) A parent's primary residence during the school year is the residence of the child.

(10) A school district may contract or lease with a third party provider for pupil transportation services.

(11)(a) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(b) The Superintendent shall determine reimbursements for school districts using a leasing arrangement in accordance with the comparable cost for the school district to operate its own transportation.

(c) Under a contract or lease, a school district's transportation administrator's time may not exceed one percent of the commercial contract cost.

(12) If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

(a) eligible student counts;

(b) bus route mileage;

(c) bus route minutes; and

(d) service to students with disabilities and bus inventory data.

#### **R277-600-8. Other Reimbursable Expenses.**

The Superintendent may reimburse a school district for the following costs with state transportation funds:

(1) salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

(a) a full time supervisor may be paid at the same rate as other professional directors in the school district; and

(b) a school district shall ensure that a supervisor's salary is commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions;

(2) a school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

(3) the wage time for bus drivers may include to and from school time consisting of:

(i) 10 minute pre-trip inspection;

(ii) actual driving time;

(iii) 10 minute post-trip inspection and bus cleanup; and

(iv) 10 minute bus servicing and fueling;

(4) a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance);

(5) purchased property services;

(6) property, comprehensive, and liability insurance;

(7) communication expenses and travel for supervisors to workshops or national conventions;

(8) supplies and materials for vehicles, the school district transportation office and the garage;

(9) training expenses to complete bus driver instruction and certification required by the Board; and

(10) other related costs approved by the Superintendent, which may include additional bus driver training.

#### **R277-600-9. Non-reimbursable Expenses.**

(1) AFR for all pupil transportation costs may only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

(2) In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

(3) Expenses determined by the Superintendent as not directly related to transportation of eligible students to and from school may not be reimbursed.

(4)(a) A local school board may determine appropriate non-school uses of school buses.

(b) A local school board may lease or rent public school buses to:

(i) federal, state, county, or municipal entities;

(ii) entities insured by State Risk Management;

(iii) non-government entities; or

(iv) entities not insured through State Risk Management.

(c) As part of any agreement to allow non-school use of a school bus, a local school board shall:

(i) require full cost reimbursement for any non-public school use including:

(A) cost per mile;

(B) cost per minute; and

(C) bus depreciation;

(ii) require a non-school user to provide:

(A) proof of insurance through State Risk Management or private insurance coverage; and

(B) a fully executed agreement for full release of indemnification;

(iii) require that any non-school use is revenue neutral; and

(iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

(5) A local school board shall approve the use of school buses by a non-governmental entity or an entity not insured through State Risk Management in an open meeting.

(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

(b) A local school board shall grant a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

#### **R277-600-10. Board Local Levy.**

(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53A-17a-164.

(2) The revenue from the Board Local Levy may be used

for transporting students and for school bus replacement.

(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

(b) A local school board shall determine hazardous walking conditions by an analysis of the following factors:

- (i) volume, type, and speed of vehicular traffic;
- (ii) age and condition of students traversing the area;
- (iii) condition of the roadway, sidewalks and applicable means of access in the area; and
- (iv) environmental conditions.

(c) A local school board may designate hazardous conditions.

(4) **Guarantee Transportation Levy**

(a) The Superintendent shall distribute funds appropriated under Subsection 53A-17a-127(7) according to each school district's proportional share of its qualifying state contribution.

(b) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53A-17a-164.

**R277-600-11. Exceptions.**

(1)(a) When undue hardships and inequities are created through exact application of these standards, a school district may request an exception to these rules from the Superintendent for individual cases.

(b) Hardships or inequities under Subsection (1)(a) may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

(c) The Superintendent may consult with the Pupil Transportation Advisory Committee in considering the exemption.

(2) A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.

(3) There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

- (a) another route is required;
- (b) a larger or additional bus is required;
- (c) a route's mileage is increased;
- (d) the number of pick-up points below the mileage limits for eligible students exceeds one; and
- (e) significant additional time is required to complete a route.

(4)(a) An ineligible student may ride a school buse on a space available basis.

(b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

**R277-600-12. Grants for Unsafe Routes.**

(1) The Board shall solicit proposals and award grants for unsafe routes as provided in Section 53A-17a-126.5.

(2) Subject to Board approval, the Pupil Transportation Advisory Committee shall:

(a) develop an application and instructions regarding the process for applying for a grant and make the application available to all school districts in the state; and

(b) develop a scoring rubric to be used in ranking applications received for purposes of funding prioritization and

distribute the rubric to all school districts in the state.

(3) The Pupil Transportation Advisory Committee may recommend modifications to the application and rubric developed under Subsection (2) as needed to address evolving risks and appropriations.

(4) The Superintendent shall use the following process to calculate grant awards:

(a)(i) multiply the miles traveled for the unsafe route or sub-route by the allowance per mile;

(ii) multiply the minutes required for the unsafe route or sub-route by the allowance per minute;

(iii) the allowances per mile and minute used shall be the same allowances described in Subsection 53A-17a-127(3) for the respective fiscal year for each district; or

(b) Follow an alternative funding method recommended by the Pupil Transportation Advisory Committee and approved by the Board based on grant applications received from school districts.

(5) A school district may identify an alternative solution that addresses unsafe routes or other health or safety conditions and is more cost-effective than creating a new route or sub-route.

(6) A school district may use grant funds under this Section R277-600-12 to pay the costs of transporting students or for other related expenditures intended to reduce the hazards that exist along the unsafe route, as approved by the Board.

(7) A recipient of grant funds under this Section R277-600-12 shall maintain sufficient records to substantiate expenditure of grant funds and provide documentation to the Board upon request.

**KEY: school buses, school transportation**

**November 7, 2016**

**Notice of Continuation September 15, 2016**

**Art X Sec 3**

**53A-17a-126**

**53A-17a-126.5**

**53A-17a-127**

**53A-1-401**

**R277. Education, Administration.****R277-603. Autism Awareness Restricted Account Distribution.****R277-603-1. 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-1-304, which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature; 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 purpose of this rule is to provide procedures, timelines and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations.

**R277-603-2. Definitions.**

(1) "Autism Awareness Restricted Account" means the account established under Section 53A-1-304.

**R277-603-3. Procedures.**

(1) The Superintendent shall provide an application for an organization that meets the qualifications of Subsection 53A-1-304(3), to apply for available Autism Awareness Restricted Account funds to the extent of the legislative appropriation.

(2) The Superintendent shall review applications and select qualified recipients.

(3) An application shall include a budget section, a plan for use of the funds by eligible charitable organizations consistent with Subsection 53A-1-304(3), and other information as requested.

(4) The Superintendent shall distribute funds to eligible charitable organizations, to the extent of funds appropriated, annually.

**R277-603-4. Timelines.**

(1) The Superintendent shall announce the availability of funds annually by March 15.

(2) Applicants may apply for funds on forms available from the Superintendent.

(3) Applications shall be due June 5 annually.

(4) Applicants identified for funding shall be notified no later than July 1 annually.

(5) The Superintendent shall distribute funds annually in July.

**R277-603-5. Accountability.**

(1) The Superintendent shall require organizations that receive funding to complete a year-end report describing and documenting the use of funds consistent with the law and this rule.

(2) The year-end report may require an independent audit or review of a funded program.

**KEY: autism awareness, restricted account****November 7, 2016****Notice of Continuation September 15, 2016****Art X Sec 3****53A-1-304****53A-1-401**

**R277. Education, Administration.****R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools.****R277-611-1. 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-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-13-106.5, which creates a Firearms Safety and Violence Prevention Pilot Program for implementation in the public schools.

(2) The purpose of this rule is to:

(a) provide a definition of certified volunteer for purposes of providing firearm safety training in a public school;

(b) direct LEAs to designate public school areas that may be used for firearm safety training for adults or students or both; and

(c) provide for voluntary firearm safety training of public school district employees or school community members or both on public school property at times determined by the local school board or local governing board.

**R277-611-2. Definitions.**

(1) "Certified volunteer" means an individual who:

(a) volunteers to teach an LEA employee or student in a public school about firearm safety; and

(b) is certified as required by Section R277-611-3.

(2) "Public school classroom or auditorium" means a classroom or auditorium in a public school:

(a) identified as available and appropriate; and

(b) designated by an LEA, superintendent, or director as available for firearm safety instruction.

**R277-611-3. Firearm Safety and Violence Prevention Pilot Program.**

(1) A local school board or charter school governing board may choose to participate in a pilot program established in accordance with the standards and limitations set forth in Section 53A-13-106.5.

(2) An LEA may designate anyone identified in Subsection 53A-13-106.5(5)(b)(ii) to provide instruction under a pilot program approved in accordance with Subsection (1).

(3)(a) A "certified firearms safety instructor" as identified in Subsection 53A-13-106.5(5)(b)(ii)(D) means a volunteer who is certified by the Utah Bureau of Criminal Identification to teach firearm safety on public school property consistent with LEA policy and direction.

(b) A list of certified firearms instructors by county is available through the Utah Department of Public Safety.

(4) A certified volunteer shall provide documentation of required training to the designated school administrator prior to the advertisement or notice of available training.

(5) In addition to obtaining certification through the Bureau of Criminal Identification, prior to volunteering in the pilot program identified in Section 53A-13-106.5, a certified firearms safety instructor shall:

(a) complete a fingerprint background check and submit to ongoing monitoring consistent with the requirements of Title 53A, Chapter 15, Part 15, Background Checks; and

(b) have the background check reviewed by an LEA administrator prior to instructing a public school age student.

**R277-611-4. Voluntary Training of Adults and Public Education Employees on Public School Property.**

(1) An LEA may allow a community group to use public

school property for voluntary firearm safety training for a public school employee or interested community member under conditions used to approve public school buildings for non-curriculum uses.

(2) An LEA shall give the greatest consideration to availability of space and the safety of school age children and school employees in the approval of a request to use public education property for voluntary firearm safety training and instruction.

(3) Live ammunition may not be brought on public school property as a part of firearm safety instruction under this R277-611-4.

**R277-611-5. Use of Public School Property for Firearm Safety Instruction.**

(1) An LEA may designate which classroom or auditorium or other appropriate public school area may be used for firearm safety instruction.

(2) An LEA shall give first priority to curriculum-related groups in allowing firearm safety instruction to be held on public school property.

(3) An LEA shall give the safety of all students and community patrons the greatest consideration in allowing for firearm safety instruction or training on public school property.

(4) If appropriate or necessary, at the LEA's discretion, the LEA may post notice in and around a public school area designated for firearm instruction and training.

**KEY: firearms, instruction**

**November 7, 2016**

**Notice of Continuation October 15, 2015**

**Art X, Sec 3**

**53A-13-106.5**

**53A-1-401**

**R277. Education, Administration.****R277-708. Enhancement for At-Risk Students.****R277-708-1. 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-166, which directs the Board to manage the Enhancement for At-Risk Students interventions by:

- (i) developing a funding formula;
- (ii) developing performance criteria;
- (iii) administering the intervention;
- (iv) distributing the appropriation; and
- (v) monitoring and reporting the effectiveness of the; 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 establish criteria and procedures for distributing Enhancement for At-Risk Students funds to LEAs.

(b) The intent of the rule and the legislative appropriation is to improve academic achievement of students who are at risk of academic failure.

**R277-708-2. Definitions.**

(1) "At-risk of academic failure" means a k-12 public school student who meets any of the following risk factors:

- (a) low performance on a Board approved assessment;
- (b) poverty;
- (c) Limited English Proficiency; or
- (d) mobility.

(2) "Available funds" means the total funds appropriated for the Enhancement for At-Risk Students interventions, less funding designated for gang prevention under Subsection 53A-17a-166(1)(b)(i).

(3) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(4) "LEA share" means the percentage of k-12 students from an LEA who are at risk of academic failure compared to the total count for the state of Utah from the previous school year.

(5) "Limited English Proficiency" or "LEP" means the total number of English learner or "EL" students in an LEA from the October 1 count from the previous school year, including:

(a) the number of EL students receiving a score of 1-4 on the English language proficiency assessment; and

(b) the number of students previously classified as based on a score of 5 or 6 on the English language proficiency assessment.

(6) "Low performance on a Board approved assessment" means the unduplicated count of k-12 students from an LEA scoring below proficient in Reading/Language, Math, and Science on one of the following exams from the previous school year:

(a) the Student Assessment of Growth and Excellence (SAGE);

(b) the Special Education adaptive testing Dynamic Learning Maps or "DLM"; or

(c) other Board approved assessment.

(7) "Mobility" means the number of k-12 students enrolled less than 160 days or its equivalent in one school within a school year, as determined by the prior year's year-end average daily membership submission.

(8) "Poverty" means the total number of k-12 students in an LEA reported as economically disadvantaged using federal

child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

**R277-708-3. Applications and Distribution of Funds.**

(1) An LEA shall submit its application to the Superintendent annually by November 1 through the Board's grant management system.

(2) The Superintendent shall distribute available funds to LEAs with an approved application monthly based on a one-twelfth distribution beginning on July 1.

(3) An LEA shall spend all allocated funds annually by June 30.

(4) An LEA that accepts funds for Enhancement for At-Risk Students intervention services shall be subject to Board accounting, auditing, and budgeting rules and policies.

(5)(a) With written approval from the Superintendent, an LEA may carry over and spend ten percent or \$50,000, whichever is less, of state Enhancement for At-Risk Student funds in the next fiscal year.

(b) An LEA shall submit a request to carry over funds under Subsection (5)(a) by August 1 annually.

(c) An LEA shall detail approved carry over amounts in a revised budget submitted through the Board's grant management system.

(d) The Superintendent shall review and approve a revised budget submitted under Subsection (5)(c) no later than October 1 in the year submitted.

**R277-708-4. Allocation of Enhancement for At-Risk Student Funds.**

(1) The Superintendent shall award available funds to an LEA based on an equal weighting of:

- (a) low performance on a Board approved assessment;
- (b) poverty;
- (c) mobility; and
- (d) limited English proficiency.

(2) The Superintendent shall base an LEA's allocation on the certified data from the Data Clearinghouse using the most recent school year for which data is complete and available.

(3) The Superintendent shall use the following funding formula to determine an LEA base to distribute to LEAs:

(a) the Superintendent shall annually calculate 4% of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs.

(b) The Superintendent shall divide the base amount described in Subsection (3)(a) equally among all eligible LEAs.

(4) The Superintendent shall annually calculate 20% of the state appropriation of the Enhancement for At-Risk Students on a per school basis to provide a targeted amount to LEAs with traditional elementary schools, secondary schools, and alternative high schools with at least 75% poverty.

(5) Of the funds remaining after the distributions described in Subsections (3) and (4), the Superintendent shall determine an LEA's share based on the LEA's percentage of students with at-risk factors for the state.

(6) The Superintendent shall use data from the Board's Data Warehouse for each LEA from the previous school year to determine the students who qualify under the following definitions:

- (a) low performance on a Board approved assessment;
- (b) poverty;
- (c) mobility; and
- (d) Limited English Proficiency.

(7) The Superintendent shall allocate funds appropriated for at-risk factors to each LEA based on the LEA's proportion of at-risk factors in comparison to the statewide total.

(8) The Superintendent shall notify an LEA that qualifies

for funding of the LEA's level of funding annually by May 1.

(9) An LEA may use funds for activities that support academic achievement of students who are at risk of academic failure.

(10) An LEA shall provide the following information as part of the application process:

- (a) specific goals related to increased academic achievement of students at-risk of academic failure;
- (b) proposed activities that are directly tied to the LEA's plan to increase student achievement;
- (c) an annual report of the use of funds through the annual financial reporting process; and
- (d) an annual report of intervention effectiveness based on performance criteria defined by the Superintendent.

**R277-708-4. Oversight: Monitoring, Evaluation and Reports.**

(1) The Superintendent may recommend that the Board designate no more than one percent of the total appropriation from the Enhancement for At-Risk Students to be used specifically by the Superintendent for oversight, monitoring and evaluation of:

- (a) LEA implementation of the intervention; and
- (b) compliance with state law and this rule.

(2)(a) An LEA that receives funding shall submit an annual evaluation report to the Superintendent consistent with Section 53A-17a-166.

(b) The report shall include the following performance criteria for students at-risk of academic failure:

- (i) student attendance information, as defined by the Superintendent;
- (ii) graduation rates;
- (iii) gains in language proficiency as measured by the English language proficiency assessment;
- (iv) gains in reading/language arts proficiency as measured by a Board approved assessment; and
- (v) gains in mathematics and science proficiency as measured by a Board approved assessment.

(3)(a) The Superintendent shall conduct tri-annual intervention reviews of each LEA receiving Enhancement for At-Risk Students funding to ensure intervention compliance.

(b) In the Superintendent's discretion or for good cause, the Superintendent may conduct additional formal or informal:

- (i) monitoring;
- (ii) reviews; or
- (iii) site visits.

(4) If the Superintendent identifies violations as a result of a review described in Subsection (4), an LEA shall prepare and submit to the Superintendent a written corrective action plan for each finding made by the Superintendent.

(5) If an LEA fails to resolve findings identified by the Superintendent under Subsection (5), the Superintendent may withhold funds as provided in R277-114.

**R277-708-5. Gang Prevention and Intervention Funds.**

(1) Consistent with Subsection 53A-17a-166(1)(b), the Superintendent shall distribute funding to LEAs for gang prevention and intervention.

(2) An LEA desiring to receive gang prevention and intervention funds shall submit a proposal consistent with Rule R277-436.

**KEY: students at risk**

**November 7, 2016**

**Notice of Continuation September 15, 2016**

**Art X Sec 3**

**53A-17a-166**

**53A-1-401**

**R277. Education, Administration.****R277-715. Out-of-School Time Program Standards.****R277-715-1. 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-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Section 53A-15-107, which requires the Board to adopt rules to set standards for high quality out-of-school time programs.
- (2) The purpose of this rule is to set standards for high quality out-of-school time programs, and establish the programs required to adopt those standards.

**R277-715-2. Definitions.**

- (1) "Assessment tool" means the Utah After-school Program Quality Assessment and Improvement Tool developed by a statewide multi-agency stakeholder group, and administered by the Utah After-school Network.
- (2) "Out-of-school time" means time that a student at a participating program is engaged in a learning environment that is not during regular school hours, including before school, after school, and during the summer.
- (3) "Participating program" means a program that receives funds from the Board or from the Department of Workforce Services to support the program's out-of-school time programming.

**R277-715-3. Requirements and Standards for High Quality Out-of-School Time Programs.**

- (1) A participating program shall:
- (a) use the assessment tool to determine the extent to which the program is meeting the standards described in this Section;
  - (b) ensure that it is working toward achieving the standards described in this Section; and
  - (c) collect and submit student attendance data to the Superintendent in a format prescribed by the Superintendent.
- (2) The Superintendent shall provide for a flag in a student's data file to indicate the student's attendance in a participating program.
- (3) The safety standard includes the following components in order to provide a safe, healthy, and nurturing environment for all participants, including that:
- (a) staff are professionally qualified to work with program participants;
  - (b) policies and procedures are established and implemented to ensure the health and safety of all program participants;
  - (c) program participants are carefully supervised to maintain safety;
  - (d) a transportation policy is established and communicated to staff and families of participants; and
  - (e) a consistent and responsive behavior management plan is established and implemented.
- (4) The relationships standard includes the following components in order to develop and maintain positive relationships among staff, participants, families, schools, and communities, including that:
- (a) staff and participants know, respect, and support each other;
  - (b) the program communicates and collaborates with the school and the community; and
  - (c) the program fosters family involvement to support program goals.
- (5) The skills standard includes the following components

in order to encourage participants to learn new skills, including that:

- (a) participants are actively engaged in learning activities that promote critical thinking, creative thinking, and that build on the individual's interests and strengths;
  - (b) the program aligns academic support and interventions to the school-day curricula to address student learning needs; and
  - (c) the program offers a variety of life skill activities and needs-based support to promote leadership skills, personal growth, and responsible behaviors toward self and others.
- (6) The administration standard includes the following components in order to ensure that the program is effectively administered, including that the program:
- (a) has established a plan for increasing capacity, ensuring program quality, and promoting sustainability, including sound fiscal management;
  - (b) establishes and consistently implements clearly-defined policies and procedures;
  - (c) recruits, hires, and trains diverse and qualified staff members who value and nurture all participants; and
  - (d) provides professional development and training opportunities to enhance staff job performance.

**KEY: out-of-school time, programs, standards, students****November 7, 2016****Art X Sec 3****53A-1-401****53A-15-107****R277. Education, Administration.****R277-914. Career and Technical Student Organizations.****R277-914-1. 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-15-202(1), which directs the Board to establish minimum standards for career and technical programs in the public education system;
  - (c) Subsection 53A-15-202(3), which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education; and
  - (d) 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) make Career and technical student organizations fiscally accountable to the Board; and
  - (b) provide procedures and supervision toward that end.

**R277-914-2. Definitions.**

- (1) "Career and technical education" or "CTE" means organized educational programs that:
- (a) prepare individuals for a wide range of high-skill, high-demand careers;
  - (b) provide students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and
  - (c) provide students competency-based instruction, hands-on experiences, or certified occupational skills, culminating in further education and meaningful employment.
- (2) "CTE areas of study" include:
- (a) agriculture;
  - (b) business;
  - (c) family and consumer sciences;
  - (d) health science;
  - (e) information technology;

- (f) marketing;
- (g) skilled and technical sciences; and
- (h) technology and engineering education.
- (3) "Career and technical student organization" or "CTSO" means a designated student organization that:
  - (a) places emphasis on leadership and skill development;
  - (b) is integral to the career and technical programs at the secondary and postsecondary levels of instruction; and
  - (c) has local, state and national affiliation.
- (4)(a) "CTSO advisor" means a professional in identified program areas designated by the Superintendent to direct a career and technical student leadership organization statewide.
  - (b) A CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the Superintendent to administer and advise in a specific program area.
- (5) "Funds designated for management of student organizations at the state level" means up to one percent (1%) of the CTE add-on fund allowed to be used for the management and operation of CTSOs at the state and local level as described in Subsection 53A-17a-113(2)(d).

**R277-914-3. Student Organization Advisory Boards.**

- (1) Each student organization designated by the Superintendent shall establish a statewide advisory board of not less than three members, one of which must be the Superintendent.
- (2) Each program area CTSO shall develop and follow organization by-laws.
- (3) Each CTSO advisory board shall have advisory fiscal oversight for the organization.
- (4) Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective CTSO advisor.

**R277-914-4. Fiscal Oversight of Student Organizations.**

- (1) A CTSO advisory board shall act consistent with fiscal procedures provided by the Superintendent.
- (2) A CTSO advisory board shall submit all required financial records for auditing on a schedule established by the Superintendent.
- (3) If requested by the Superintendent or the Board, a CTSO's financial records shall be submitted for auditing whenever there is a change in the CTSO advisor.
- (4)(a) The Superintendent shall designate a school district or institution to act as the fiscal agent for a CTSO's fiscal account.
  - (b) The Superintendent shall work with the designated fiscal agent to provide oversight and accounting procedures for the CTSO fiscal account.
- (5) The funds designated for management of student organizations at the state level shall be dispersed by the designated state fiscal agent for CTSOs through separate accounts for salaries, operating expenses and national conference travel.

**KEY: secondary education, career and technical education**  
**November 7, 2016** 53A-15-202(1)  
**Notice of Continuation September 15, 2016** 53A-15-202 (3)  
 53A-1-401

**R309. Environmental Quality, Drinking Water.****R309-105. Administration: General Responsibilities of Public Water Systems.****R309-105-1. Purpose.**

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.

R309-105-3 Definitions.

R309-105-4 General.

R309-105-5 Exemptions from Monitoring Requirements.

R309-105-6 Construction of Public Drinking Water Facilities.

R309-105-7 Source Protection Plans.

R309-105-8 Existing Water System Facilities.

R309-105-9 Minimum Pressure.

R309-105-10 Operation and Maintenance Procedures.

R309-105-11 Operator Certification.

R309-105-12 Cross Connection Control.

R309-105-13 Finished Water Quality.

R309-105-14 Operational Reports.

R309-105-15 Annual Reports.

R309-105-16 Reporting Test Results.

R309-105-17 Record Maintenance.

R309-105-18 Emergencies.

**R309-105-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

**R309-105-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

**R309-105-4. General.**

(1) Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

(2) For compliance monitoring required by R309-200 through 215, public water systems must use a laboratory certified by the Utah Public Health Department in accordance with R444-14-4. The Federal Safe Drinking Water Act requires each analyte to be analyzed by a specific method. These methods are described in the July 1, 1992 through 2015, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act).

**R309-105-5. Exemptions from Monitoring Requirements.**

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Director may modify the

monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Director authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

**R309-105-6. Construction of Public Drinking Water Facilities.**

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing by the Director prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Director as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Director prior to approval of any plans or specifications for projects described in R309-500-4(1) as new or previously un-reviewed water system.

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 of these rules. The Director may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-500 through R309-550 are not appropriate. Thus, the Director may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health. In order for the Director to consider such a request, the public drinking water system shall submit a written request directly from the management of the public drinking water system, preferably on system letterhead, that includes the following:

(i) citation of the specific rule for which the "exception" is being requested;

(ii) a detailed explanation, drawings may be included, of why the conditions of rule cannot be met;

(iii) what the system proposes, drawings may be included, in lieu of rule;

(iv) justification the proposed alternative will protect the public health to a similar or better degree than required by rule.

Physical conditions as well as cost may be justification for requesting an "exception-to-rule."

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-500 through R309-550. These treatment techniques may be accepted by the Director if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be

submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Director.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

**R309-105-7. Source Protection.**

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

(3) R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public transient non-community water systems to the extent that they are using existing surface water sources of drinking water.

**R309-105-8. Existing Water System Facilities.**

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

**R309-105-9. Minimum Water Pressure.**

(1) Unless otherwise specifically approved by the Director, no water supplier shall allow any connection to the water system where the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Director, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

**R309-105-10. Operation and Maintenance Procedures.**

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Director.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Director. Residual checks shall be taken a minimum of three times each week by the operator of any system using disinfectants. The Director may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Director. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these rules (see R309-515-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

**(6) Seasonal Operation**

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

**(7) Pump Lubricants**

All oil lubricated pumps for culinary wells shall utilize mineral oils suitable for human consumption as determined by the Director. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

**R309-105-11. Operator Certification.**

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

**R309-105-12. Cross Connection Control.**

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2009 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be in-line serviceable (repairable), in-line testable and have certification through third party certifying agencies to be used within a public drinking water system. Third party certification shall consist of any combination of two certifications, laboratory or field, performed by a recognized testing organization which has demonstrated competency to perform such tests.

(5) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the

device tested.

(6) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

**R309-105-13. Finished Water Quality.**

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

**R309-105-14. Operational Reports.**

(1) Written Operational Reports.

(a) If, in the opinion of the Director, a water system is not properly operated, the Director may require a public water system to submit a written operational report covering the operation of the whole or a part of the water system's infrastructure.

(b) The Director may require revisions to the submitted operational report to ensure satisfactory operation, and may order the water system to follow the operational report.

(c) If the water system fails to implement the provisions of the operational report, as evidenced by unsatisfactory delivery of a safe and/or reliable supply of drinking water, the Director may order further remedies as deemed necessary.

(2) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Director (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturer's data.

(3)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Director.

**R309-105-15. Report Submittal.**

(1) A public water system shall submit water use data if required by a state agency and shall verify the accuracy of the data by including a certification by a certified operator or a professional engineer performing the duties of a certified operator.

(2) A public water system shall comply with the report submittal requirements of the R309 rules.

**R309-105-16. Reporting Test Results.**

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the

Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(f) There are additional reporting requirements in other sections of the rules, see R309-215-16(5).

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Director may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Director within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Director, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii)

or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as CaCO<sub>3</sub>, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of-entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

### **R309-105-17. Record Maintenance.**

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Director determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct

violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Director pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Director modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Director approves alternative monitoring locations, you must keep a copy of the Director's notification on file for 10 years after the date of the Director's notification. You must make the IDSE report and any Director notification available for review by the Director or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Director notification available for review by the Director or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep most keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep most keep results of profile (raw data and analysis) indefinitely.

### **R309-105-18. Emergencies.**

(1) The Director or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the

quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be realistically considered.

**KEY: drinking water, watershed management**

**November 22, 2016**

**19-4-104**

**Notice of Continuation March 13, 2015**

**R309. Environmental Quality, Drinking Water.****R309-400. Water System Rating Criteria.****R309-400-1. Authority.**

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-100 through R309-705 hereinafter referred to as Rules.

**R309-400-2. Extent of Coverage.**

This rule shall apply to all public water systems as defined in R309-100.

**R309-400-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

Corrective Action Plan - an agreement between the Division of Drinking Water and a public drinking water system establishing conditions and timelines for addressing significant deficiencies or E. coli contamination of a drinking water source.

Treatment Technique - A required process intended to reduce the level of a contaminant in drinking water.

Treatment Technique Violation - failure to correct significant deficiencies, address E. coli positive source contamination or adhere to specific terms of a Corrective Action Plan.

**R309-400-4. Water System Ratings.**

(1) The Director shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to water systems for each violation of these requirements (R309-100 through R309-705) as the requirements apply to each individual water system. The number of points that shall be assessed is outlined in the following sections of this rule. The number of points represents the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality, Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and, Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings:

(a) Approved - In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

- (i) Community water system - 150 points;
- (ii) Non-Transient Non-Community water system - 120 points; and
- (iii) Non-Community water system - 100 points.

(b) Not Approved - In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) Corrective Action - In order to qualify for a Corrective Action rating the public water system must submit the following:

- (i) A written agreement to the Director stating a willingness to comply with the requirements set forth in the Rules; and,
- (ii) A compliance schedule and time table agreed upon by the Director outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and,
- (iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the

total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Director. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Director may at any time rate a water system Not Approved, if an immediate threat to public health exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or assessed points as provided in R305-7.

**R309-400-5. Quality, Monitoring and Public Notification Violations.**

(1) Total Coliform Rule: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5(6); or the monitoring requirements in R309-210-5; and the associated public notification requirements in R309-220. The bacteriological points assessed shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly, unless otherwise noted.

(a) For each major bacteriological routine monitoring violation, 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) For each minor bacteriological routine monitoring violation, 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(c) For each major bacteriological repeat monitoring violation, 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) For each minor bacteriological repeat monitoring violation, 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(e) For each additional monitoring violation (R309-210-5(2)(e)), 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(f) For each non-acute bacteriological MCL violation (R309-200-5(6)(a)), 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) For each acute bacteriological MCL violation (R309-200-5(6)(b)), 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(2) Ground Water Rule: All points assessed to public water systems via this subsection are based on violations of the standards in R309-215-16. Points assessed for any significant deficiency shall be deleted as the deficiencies are corrected and are reported to the Director. The bacteriological points assessed shall be updated on a monthly basis with the total number of points reflecting the most recent 12-month period or the most recent four quarters for those water systems that collect bacteriological samples quarterly, unless otherwise noted.

(a) For failure to collect triggered source samples in violation of R309-215-16(2)(a)(i)(A) and (a)(i)(B), 40 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(b) For failure to collect assessment source samples in

violation of R309-215-16(2)(b)(i), 5 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(c) For failure to correct a significant deficiency in violation of R309-215-16(4)(a)(i) and (ii), R309-215-16(4)(c) or R309-215-16(4)(d), 35 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(d) For an *Escherichia coli* in violation of R309-215-16(4)(b)(i) and (ii), 40 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.

(3) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5; or the monitoring requirements in R309-205, 210 and 215; and the associated public notification requirements in R309-220. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Director.

(a) Inorganic and Metal Contaminants:

(i) For each major chemical monitoring violation for inorganic and metal contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for inorganic and metal contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for inorganic and metal contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(b) Sulfate (for non-community water systems only):

(i) For each major chemical monitoring violation for sulfate, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for sulfate, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for sulfate, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(c) Radiologic Contaminants:

(i) For each major chemical monitoring violation for radiological contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for radiological contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for radiological contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(d) Asbestos Contaminants:

(i) For each major chemical monitoring violation for source water or distribution system asbestos, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for source water or distribution system asbestos, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for source water or distribution system asbestos, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(e) Nitrate:

(i) For each routine chemical monitoring violation for nitrate, 50 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each MCL exceedance of nitrate, 60 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(f) Nitrite:

(i) For each routine chemical monitoring violation for nitrite, 35 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each MCL exceedance of nitrite, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(g) Volatile Organic Chemicals:

(i) For each major chemical monitoring violation for volatile organic chemical contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for volatile organic chemical contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(i) Disinfection Byproducts:

(i) Total Trihalomethanes:

(A) For each routine chemical monitoring violation for total trihalomethanes, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for total trihalomethanes, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) Haloacetic Acids (HAA5):

(A) For each routine chemical monitoring violation for HAA5, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for HAA5, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iii) Bromate:

(A) For each routine chemical monitoring violation for bromate, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for bromate, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iv) Chlorite:

(A) For each routine chemical monitoring violation for chlorite, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chlorite, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(j) Disinfectant Residuals:

(i) Chlorine:

(A) For each routine chemical monitoring violation for chlorine, 10 points shall be assessed. R309-210-8(3)(a). For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chlorine, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(C) For a disinfected system that does not maintain a trace residual at all points of the distribution system, 2 points shall be assessed. R309-105-10(1) and R309-200-5(7).

(D) For a disinfected system that lacks an adequate number of disinfection residual sample sites, 2 points shall be assessed. R309-210-8(3)(a)(i)(z15).

(ii) Chloramines:

(A) For each routine chemical monitoring violation for chloramines, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chloramines, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iii) Chlorine Dioxide:

(A) For each routine monitoring violation for chlorine dioxide, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each non-acute chlorine dioxide MCL violation, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(C) For each acute chlorine dioxide MCL violation, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(iv) Ground Water Rule, where a water system has received a 4-Log exemption from triggered source water monitoring:

(A) For a ground water treatment facility serving greater than 3300 population lacking equipment to measure chlorine residuals continuously entering the distribution system, 20 points shall be assessed. R309-215-10(1).

(B) For a ground water system serving greater than 3300 people failing to continuously monitor the residual disinfectant concentrations, 10 points shall be assessed. R309-215-16(3)(b)(iii)(A)(I).

(C) For a ground water system serving less than 3300 people failing to collect a daily grab sample during peak demand to monitor the residual disinfectant concentrations, 10 points shall be assessed. R309-215-16(3)(b)(iii)(A)(II).

(D) For a ground water system that during the past year, the disinfection process was not operated uninterrupted while water was being produced, points will be assessed based on monthly and quarterly treatment reports. R309-200-5(7).

(E) For a ground water system that is required to provide continuous disinfection but fails to do so, 10 points shall be assessed for each month the failure continues. R309-520-6(1).

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point

shall be assessed.

(iii) A system that fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification, 10 points shall be assessed.

(iv) A system that fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification, 10 points shall be assessed.

(v) A system that fails to complete public notification/education if the lead/copper action levels have been exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system that still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification, 2 points shall be assessed.

(vii) A system that fails to notify its customers of their lead and copper sample results, 5 points shall be assessed.

(viii) A system that fails to send the lead and copper certification notice to the Division, 5 points shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity, 35 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(m) Surface Water Treatment:

(i) For water systems having sources, which are classified as under direct influence from surface water and which fail to abandon, retrofit or provide conventional complete treatment or its equivalent within 18 months of notification shall be assessed 150 points. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

(ii) Quality and Monitoring: The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent 12-month period.

(A) Turbidity:

(I) For each turbidity exceedance that requires tier 1 notification under R309-220-5(1)(e) or (f), 50 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(II) For each turbidity exceedance that requires tier 2 notification under R309-220-5(1)(e) or (f), 35 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(III) For each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent, 25 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(IV) For any period of time that exceeds 4 hours where the system fails to continuously measure (or perform grab samples) the combined filter effluent turbidity, 50 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(V) For a water system whose failure to repair continuous turbidity monitoring equipment within 5 working days, 50 points shall be assessed.

(B) Disinfection:

(I) For each instance where the disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours, 25 points shall be assessed. For the associated failure to perform public notification, 5 points shall be assessed.

(II) For each instance where there is insufficient disinfectant contact time, 35 points shall be assessed. For the associated failure to perform public notification, 5 points shall be assessed.

(iii) Treatment Process Control:

(A) For each instance a treatment facility exceeds the assigned filter rates, 30 points shall be assessed.

(B) For each month a water system fails to verify calibration of the plant turbidimeters, 5 points shall be assessed.

(C) For each month a water system fails to submit a water treatment plant report, 50 points shall be assessed.

### R309-400-6. Physical Facilities.

All points assessed to public water systems via this subsection are based upon violation of R309-500 through R309-705 unless otherwise noted. These points shall be assessed and updated upon notification of the Director and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed 200 points.

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth, 2 points shall be assessed. R309-515-5(5)(a).

(b) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake, 2 points shall be assessed. R309-515-5(5)(e).

(c) Where impoundment reservoirs have not had brush and trees removed to the high water level, 2 points shall be assessed. R309-515-5(6)(a).

(d) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading, 10 points shall be assessed. R309-515-5(6)(d).

(3) Well Sources

(a) For each well that is not equipped with a sanitary seal, or has any unsealed opening into the well casing, 50 points shall be assessed. R309-515-6(6)(i).

(b) For each well that does not utilize food grade mineral oil for pump lubrication, 25 points shall be assessed. R309-515-8(2).

(c) For each well casing that does not terminate at least 12 inches above the well house floor, 18 inches above the final ground surface, or shows evidence of being subject to flooding, 20 points shall be assessed. R309-515-6(6)(b)(vi) and R309-515-6(13)(a) and (d).

(d) For each well fitted with a pitless adaptor that does not maintain a water tight seal throughout, 50 points shall be assessed. R309-515-6(12)(c)(x).

(e) For each wellhead that is not properly secured to protect the quality of the well water, 20 points shall be assessed. R309-515-6(13)(f).

(f) For each well that is equipped with a pump to waste line that does not discharge with a minimum of 12-inch clearance to the flood rim, 20 points shall be assessed. R309-515-6(12)(d)(ix).

(g) For each well that is equipped with a pump to waste line without a downturned discharge end covered with a No. 4 mesh screen, 5 points shall be assessed. R309-515-6(12)(d)(ix).

(h) For each well that is equipped with a pump to waste line that discharges to a receptacle without local authorization, 2 points shall be assessed.

(i) For each well that does not have a means to permit periodic measurement of water levels, 2 points shall be assessed. R309-515-6(12)(e)(i) and (ii).

(j) For each well casing vent that is not covered with a No. 14 or finer mesh screen, 2 points shall be assessed. R309-515-

6(12)(d)(iii) and R309-550-6(6)(b).

(k) For each well casing vent that is not downturned, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b). Also Division of Water Rights Rule R655-4-11.7.11.

(l) For each well casing vent that does not have adequate clearance to prevent the contaminants from entering the well, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b).

(m) For each well (excluding the naturally flowing wells) that has discharge piping that is not equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow, and 5) shut-off valve, 1 point shall be assessed for each component not present. R309-515-6(12)(d)(iv).

(n) For each well that pumps directly into a distribution system and does not have a means to release trapped air from the discharge piping (for example, release air through an air release vacuum relief valve, through a pump to waste line or pumps directly to a tank), 5 points shall be assessed. R309-515-6(12)(d)(v).

(o) For each well house that is not at least 6 inches above the final ground level, is not sloped to drain, or shows evidence of being subject to flooding, 5 points shall be assessed. R309-515-6(13)(b).

(p) For each well that has a cross connection present in the discharge piping, 20 points shall be assessed. R309-105-12(1) and R309-515-6(12)(d)(iii).

(q) For each well with an air vacuum relief valve on the well discharge piping that is not screened, 2 points shall be assessed. R309-515-6(12)(d)(v).

(r) For each well with an air vacuum relief valve on the well discharge piping that is not downturned, 2 points shall be assessed. R309-515-6(12)(d)(v).

(s) For each well with an air vacuum relief valve on the well discharging piping that does not have a 6-inch clearance to prevent contaminants from entering the piping, 2 points shall be assessed. R309-515-6(12)(d)(v).

(t) For each well that has rotating and electrical equipment that is not provided with protective guards, 2 points shall be assessed.

(4) Spring Sources:

(a) For each spring source that allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices), 10 or 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water. R309-515-7 (7)(i).

(b) For each spring area that does not have a minimum of ten feet of relative impervious soil or an acceptable alternate design with liner, or the spring collection area shows evidence of damaged liner or impervious soil cover, 10 points shall be assessed. R309-515-7(7)(a) and (b).

(c) For each spring area that has deep-rooted vegetation within the fenced collection area, 10 points shall be assessed. R309-515-7(7)(f).

(d) For each spring area that has deep rooted vegetation interfering with the spring collection, 10 points shall be assessed. R309-515-7(7)(f).

(e) For each spring with a spring collection/junction box that does not have a proper shoebox lid, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-14(2).

(f) For each spring with a spring collection/junction box that does not have a proper gasket on the lid, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-14(2).

(g) For each spring with a spring collection/junction box that lacks an adequate air vent, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-15.

(h) For each spring with a spring collection/junction box

with a vent that is not screened with No. 14 mesh screen, 2 points shall be assessed. R309-515-7(7)(d) and R309-545-15.

(i) For each spring with a spring collection/junction box with a vent that is not down-turned or inverted, 2 points shall be assessed. R309-515-7(7)(d) and R309-545-15(1).

(j) For each spring with a spring collection/junction box with a vent that does not have sufficient clearance to prevent ice blockage, or is not at least 24 inches above the earthen cover, 2 points shall be assessed. R309-515-7(7)(d) and R309-545-15(2).

(k) For each spring with a spring collection/junction box that lacks a raised access entry, at least 4 inches above the spring box or 18 inches above the earthen cover, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-14(1).

(l) For each spring with a spring collection/junction box that is not secured against unauthorized access, 20 points shall be assessed. R309-515-7(7)(d) and R309-545-14(3).

(m) For each spring collection area without a proper fence, 10 points shall be assessed. R309-515-7(7)(e).

(n) For each spring collection area that does not have a diversion channel, or berm capable of diverting surface water away from the collection area, 5 points shall be assessed. R309-515-7(7)(g).

(o) For each spring system that does not have a permanent flow measuring device, 5 points shall be assessed. R309-515-7(7)(h).

(p) For each spring area with an overflow or a combined overflow/drain discharge that is not screened with a No. 4 mesh screen, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-13.

(q) For each spring collection/junction box overflow that does not have a freefall of 12 to 24 inches between the bottom of the discharge pipe and the surrounding ground, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-13.

(r) For each spring collection/junction box that has any unsealed opening(s) resulting in public health risk, 50 points shall be assessed. R309-515-7(7)(d) and R309-545-9(1).

#### (5) Pump Stations.

(a) For a pumping facility that does not have a standard pressure gauge on the discharge line, 1 point shall be assessed. R309-540-5(6)(c)(i).

(b) For a pumping facility building without adequate drainage or showing evidence of flooding, 5 points shall be assessed. R309-540-5(2)(a)(v) and (vi).

(c) For a pumping facility where the discharge line from the air release valve is not screened with number 14 non-corrodible mesh screen, 2 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)(b).

(d) For an air release valve located within a building, if the discharge line terminates less than six inches above the floor, 2 points shall be assessed. R309-515-6(12)(d)(v) and R309-540-5(6)(b)(ii).

(e) For an air release valve located in a chamber, if the air release valve discharge piping terminates less than 12 inches above grade, or less than one foot above the top of the pipe where the chamber is not subject to flooding, 10 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)(b).

(f) For a pumping facility where the discharge line from the air release valve is not down-turned, 2 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)(b).

(g) For a pumping facility where there is inadequate heating, lighting or ventilation, 5 points shall be assessed. R309-540-5(2)(e), (f) and (g).

(h) For a pumping facility where there are cross connections present, 20 points shall be assessed. R309-105-12(1).

(i) For an inline booster pumping facility designed to provide pressure directly to the distribution system, which does not have at least two pumping units such that with any one

pump out of service the remaining pump or pumps are capable of meeting the peak day demand of the specific portion of the system served, 20 points shall be assessed. R309-540-5(4)(b).

(j) For a pumping facility which does not have protective guards on rotating and electrical equipment, 2 points shall be assessed. R309-525-21.

(k) For a pumping facility which is not secured against unauthorized access shall be assessed, 5 points. R309-540-5(1)(a)(v).

#### (6) Hydropneumatic pressure tanks.

(a) For diaphragm or air tanks located below ground without adequate provisions for drainage, maintenance and flood protection, 10 points shall be assessed. R309-540-6(2).

(b) For a pressure tank with a pump cycle that cycles more frequently than once every 4 minutes, 5 points shall be assessed. R309-540-6(5).

#### (7) Storage:

(a) A water system with uncovered finished water storage shall immediately be assessed a rating of not approved, 200 points shall be assessed. R309-545-9(1) and (2).

(b) For each storage tank roof showing evidence of water ponding with deterioration, 10 points shall be assessed. R309-545-9(4).

(c) For each storage tank that does not have an access to the interior for cleaning and maintenance, 9 points shall be assessed. R309-545-14.

(d) For each storage tank access that does not have a shoebox type lid with a minimum of a 2-inch overlap, 3 points shall be assessed. R309-545-14(2).

(e) For each storage tank access that lacks a proper gasket between the lid and frame, 3 points shall be assessed. R309-545-14(2).

(f) For each storage tank access that lacks a minimum rise of 4 inches above the tank roof or a minimum of 18 inches above an earthen cover, 3 points shall be assessed. R309-545-14(1).

(g) For each storage tank that is not vented, 6 points shall be assessed. R309-545-15.

(h) For each finished water storage tank vent that is not downturned or covered from rain and dust, 2 points shall be assessed. R309-545-15(1).

(i) For each storage tank vent that does not terminate a minimum of 24 inches above the surface of the storage tank roof if the tank is a buried structure, 2 points shall be assessed. R309-545-15(2).

(j) For each storage tank vent that is not screened with number 14 non-corrodible mesh screen, 2 points shall be assessed. R309-545-15(4).

(k) For each storage tank that lacks an overflow, 15 points shall be assessed. R309-545-13.

(l) For each storage tank overflow that does not terminate 12 to 24 inches above the ground, 5 points shall be assessed. R309-545-13.

(m) For each storage tank overflow that is not screened with number 4 non-corrodible mesh screen, 5 points shall be assessed. R309-545-13(3).

(n) For each storage tank overflow that is connected to a sewer system without an adequate air gap, 5 points shall be assessed. R309-545-13(5).

(o) For each storage tank with a drain that does not discharge through a physical airgap of at least 2 pipe diameters, 5 points shall be assessed. R309-545-10(1).

(p) For each storage tank with inadequate or improper means of site drainage or showing evidence of standing surface water within 50 feet of the tank, 5 points shall be assessed. R309-545-7(4).

(q) For each storage tank with any unsealed roof or wall penetrations, 50 points shall be assessed. R309-545-9(2).

(r) For each storage tank where the roof and sidewalls

show signs of deterioration, 10 to 50 points shall be assessed based upon the size and number of cracks, the loss of structural integrity, and the access of contamination to the drinking water. R309-545-9(1).

(s) For each storage tank without a safe access (such as ladders for tanks in excess of 20 feet, ladder guards, or railings) or safely located entrance hatches, 2 points shall be assessed. R309-545-19(1), (2) and (3).

(t) For each storage tank with internal coatings not in compliance with ANSI/NSF standard 61, 30 points shall be assessed. R309-545-11.

(u) For a storage facility that is not secured against unauthorized access, 20 points shall be assessed. R309-545-14(3).

(8) Distribution System:

(a) A water system that fails to provide the minimum water pressures as required in R309-105-9 at all times and at all locations within the distribution system, 50 points shall be assessed. R309-105-9 and R309-550-5(1).

(b) A water system using pipe and materials not meeting the ANSI/NSF 61 standard shall be assessed 30 points. R309-550-6.

(c) A water system with pipelines installed without adequate separation distance from the sanitary sewer lines shall be assessed 30 points. R309-550-7.

(d) A new water system constructed after January 1, 2007 or an existing water system modification without adequate pressure as defined in R309-105-9(2) shall be assessed 50 points.

(e) A water system which has a distribution line that crosses under a surface water body without adequate protection as outlined in R309-550-8(8)(b) shall be assessed 50 points.

(f) A water system which has distribution system flushing devices, blow-offs or air relief valves, which are directly connected to a sewer or do not have a proper air gap, shall be assessed 20 points. R309-550-6 and R309-550-9.

(g) For a water system that does not properly follow the AWWA disinfection standards 10 points shall be assessed. R309-550-8(10).

(h) For a water system that is required by the local fire authority to provide fire protection or has fire hydrants connected with water mains less than 8 inches in diameter, 5 points shall be assessed. These points will only be assessed for water mains installed after 1995. R309-550-5(4) and (5).

(i) For each air relief valve vent piping, which is not screened with a No. 14 mesh and downturned, 10 points shall be assessed. R309-550-6(6)(b).

(j) For an air release valve located in a chamber, if the air release valve discharge piping terminates less than 12 inches above grade or less than one foot above the top of the pipe where the chamber is not subject to flooding, 10 points shall be assessed. R309-550-6(6)(b).

(k) For each air relief valve located in a chamber without a drain or adequate sump, or showing evidence of being subject to flooding, 30 points shall be assessed. R309-550-7.

(l) For each air vacuum release valve chamber that is flooded at the time of inspection, 50 points shall be assessed.

(m) For an unprotected cross-connection in the distribution system as required in R309-550-9, 50 points shall be assessed.

(9) Quantity requirements

(a) A water system without sufficient source capacity to meet peak day and average yearly flow requirements, from 10 to 50 points shall be assessed. The number of points shall be based upon the severity of the shortage, including the number of times and duration of water outages or low pressure. R309-510-7.

(b) A water system without sufficient storage capacity to meet average day demand, plus the required fire suppression volume if applicable, 10 to 50 points shall be assessed. The

number of points shall be based upon the severity of the shortage including the number of times and duration of water outages. R309-510-8.

**R309-400-7. Treatment Processes.**

(1) General Treatment.

(a) For a treatment facility without anti-siphon control to assure that liquid chemical solutions cannot be siphoned through solution feeders into the process units, 2 points shall be assessed. R309-525-11(9)(b)(ii) and (c).

(b) For a treatment facility with a process tank that is not properly labeled to designate the chemical contained, 2 points shall be assessed. R309-525-11(8)(c)(vii).

(c) For a treatment facility with chemicals not stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit, 2 points shall be assessed. R309-525-11(6)(a)(iii).

(d) For a treatment facility with no cross connection control provided to assure that no direct connections exist between any sewer and the drain or overflow from the feeder, solution chamber, or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit, or waste receptacle, 10 points shall be assessed. R309-525-11(9)(b)(iii).

(e) For a treatment facility with no spare parts available for all feeders to replace parts that are subject to wear and damage, 2 points shall be assessed. R309-525-11(7)(b)(v).

(f) For a treatment facility where incompatible chemicals are fed, stored or handled together, 2 points shall be assessed. R309-525-11(7)(a)(iv).

(g) For a treatment facility where daily operating records do not reflect chemical dosages and total quantities used, 2 points shall be assessed. R309-105-14(3).

(h) For a water system that fails to maintain and properly calibrate all instrumentation needed to verify the treatment process, 2 points shall be assessed. R309-525-25(4).

(i) For a treatment facility without the means to accurately measure the quantities of chemicals used, 20 points shall be assessed. R309-525-11(7)(a)(i) and R309-525-11(6)(b)(iii).

(j) A water system that does not keep acids and caustics in closed corrosion-resistant shipping containers or storage units, 2 points shall be assessed. R309-525-11(11)(a)(i).

(k) For a treatment facility that does not have the vent hose from the feeder to discharge to the outside atmosphere above grade or have the end covered with #14 non-corrodible mesh screen, 2 points shall be assessed. R309-520-7(2)(f).

(l) For a treatment facility that uses any chemical that is added to water being treated for use in a public water system for human consumption that does not comply with ANSI/NSF Standard 60, 25 points shall be assessed. R309-525-11(5).

(m) For a treatment facility that does not have a finished water sampling tap(s), 2 points shall be assessed. R309-525-18.

(n) For a treatment facility that is not performing adequate process control testing consistent with the specific treatment process, 30 points shall be assessed. R309-525-19.

(o) For a surface water treatment facility that does not have continuous residual disinfection equipment to measure the residual in mg/L entering the distribution system, 20 points shall be assessed. R309-215-10(1).

(p) For a treatment facility without provisions for disposing of empty bags, drums or barrels by an acceptable procedure that will minimize operator exposure to dusts, 2 points shall be assessed. R309-525-11(6)(b) and (c).

(q) For a treatment facility that does not provide cross connection control on the make-up waterlines discharging to solution tanks, 10 points shall be assessed. R309-525-11(9)(b)(i).

(r) For a treatment facility with solution tank overflow pipes that do not have a free fall discharge or are not located

where noticeable, 2 points shall be assessed. R309-525-11(8)(b)(v).

(s) For a treatment facility without adequate spill containment provisions, 2 points shall be assessed. R309-525-11(6)(a)(iv)(B).

(t) For a treatment facility with acid storage tanks that are not vented to the outside atmosphere with separate screened vents, 2 points shall be assessed. R309-525-11(8)(b)(vi).

(u) For a treatment facility without provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water), 5 points shall be assessed. R309-525-23.

(v) For a treatment facility where cross connection control is not provided on the feed lines to the solution tanks, 10 points shall be assessed. R309-525-11(9)(b) and (c).

(w) For a treatment facility that does not have a means to measure water flow rate, 10 points shall be assessed.

(x) For a surface water treatment facility where the piping is not labeled and color coded to identify the direction of flow and the contained liquid, 2 points shall be assessed. R309-525-8.

(y) Treatment facilities not secured against unauthorized access, 20 points shall be assessed.

(z) For a treatment facility using expired chemical reagents for process control, 5 points shall be assessed.

(aa) For a treatment facility with no access to lab or test kits for process testing, 2 points shall be assessed. R309-525-17(1).

(bb) For a treatment facility lacking cross connection control for the in-plant water supply, 10 points shall be assessed. R309-525-11(9)(b)

(2) Disinfection.

(a) General.

(i) For a chlorination facility which is not heated, lighted or ventilated as necessary to assure proper operation or the equipment and serviceability, 2 points shall be assessed. R309-520-7(1)(l).

(ii) For a disinfection facility without cross connection control on the solution feeders into the process units as required in R309-525-11(9)(c), 10 points shall be assessed. R309-525-11(9)(b)(ii).

(iii) For a chlorination facility where there is no standby disinfection equipment of sufficient capacity available to replace the largest unit, 10 points shall be assessed. R309-520-7(1)(k).

(iv) For a disinfection facility where the correct reagent is not used for testing free disinfectant residual, 2 points shall be assessed.

(v) For a treatment facility where the pre- and post-chlorination processes are not independent of each other, to prevent possible siphoning of partially treated water into the clear well, 50 points shall be assessed. R309-525-11(9)(b)(iv).

(vi) For a disinfection facility where chemical solution tanks are not kept covered, 2 points shall be assessed. R309-525-11(8)(b)(iii).

(vii) For a disinfection facility without disinfectant residual test equipment, 2 points shall be assessed. R309-520-7(1)(j).

(viii) For a disinfection facility where there is no means to measure the volume of water treated, 2 points shall be assessed. R309-520-7(1)(i).

(b) Gas chlorination.

(i) For a gas chlorination facility without an automatic switch over of chlorine cylinders to assure continuous disinfection, 2 points shall be assessed. R309-520-7(2)(a).

(ii) For a gas chlorination facility without scales for weighing cylinders, 2 points shall be assessed. R309-520-7(2)(k).

(iii) For a gas chlorination facility without a leak repair kit, 15 points shall be assessed. R309-520-7(2)(p).

(iv) For a gas chlorination facility without respiratory equipment available and stored at a convenient location, 5 points shall be assessed. R309-520-7(2)(o).

(v) For a gas chlorination facility housed in a water treatment plant building where the chlorine gas feed and storage area is not enclosed and separated from other operating areas, 2 points shall be assessed. R309-520-7(2)(h).

(vi) For a gas chlorination facility where the chlorination equipment rooms are not vented such that the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures, 5 points shall be assessed. R309-520-7(2)(e)(ii).

(vii) For a gas chlorination facility where the chlorination equipment rooms are not vented such that air inlets are through louvers near the ceiling, 2 points shall be assessed. R309-520-7(2)(e)(iii).

(viii) For a gas chlorination facility where the chlorination equipment rooms are not vented such that separate switches for the fans and lights are outside of the chlorine room, at the entrance to the chlorination equipment room and protected from vandalism, 2 points shall be assessed. R309-520-7(2)(e)(v).

(ix) For a gas chlorination facility where the vent hose from the feeder to discharge to the outside atmosphere is not above grade or does not have the end covered with #14 non-corrodible mesh screen, 2 points shall be assessed. R309-520-7(2)(f).

(x) For a gas chlorination facility without a bottle of ammonium hydroxide (56%) available for leak detection, 2 points shall be assessed. R309-520-7(2)(p).

(xi) For a gas chlorination facility where full and empty cylinders of chlorine gas are not restrained in position to prevent upset, 2 points shall be assessed. R309-520-7(2)(i)(ii).

(xii) For a gas chlorination facility with full and empty cylinders of chlorine gas stored in areas in direct sunlight or exposed to excessive heat, 2 points shall be assessed. R309-520-7(2)(i)(iii).

(xiii) For a gas chlorination facility in a water treatment plant building where the chlorine room is constructed in a manner that any openings between the chlorine room and the remainder of the plant are not sealed, 2 points shall be assessed. R309-520-7(2)(h)(ii).

(xiv) For a gas chlorination facility housed in a water treatment plant building that lacks outward-opening doors with panic bars, 2 points shall be assessed. R309-520-7(2)(h)(iii).

(xv) For a gas chlorination facility housed in a water treatment plant building with floor drains that do not discharge to the outside of the building and are not connected to other internal or external drain systems, 5 points shall be assessed. R309-520-7(2)(h)(iv).

(xvi) For a gas chlorination facility without a means of chlorine leak detection, such as a bottle of ammonia hydroxide solution or chlorine leak detection equipment, 15 points shall be assessed. R309-520-7(2)(p).

(c) Chlorine dioxide.

(i) For a chlorine dioxide disinfection facility where provisions are not made for proper storage of sodium chlorite to eliminate any danger of explosion 2 points shall be assessed. R309-520-10(3)(b) and R309-525-11(11)(b)(i).

(ii) For a chlorine dioxide disinfection facility where sodium chlorite is not stored by itself in a separate room and away from organic materials that would react violently with sodium chlorite, 2 points shall be assessed. R309-520-10(5)(a) and R309-525-11(11)(b)(i)(A).

(iii) For a chlorine dioxide disinfection facility where sodium chlorite storage structures are not constructed of noncombustible materials, 2 points shall be assessed. R309-520-10(3)(b)(iv) and R309-525-11(11)(b)(i)(B).

(iv) For a chlorine dioxide disinfection facility where a

sodium chlorite storage structure is not located in an area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions. 2 points shall be assessed if this is not the case. R309-520-10(4)(d) and R309-525-11(11)(b)(i)(C).

(v) For a chlorine dioxide disinfection facility that stores combustible or reactive materials in the operating area, 2 points shall be assessed. R309-520-10(5)(a).

(vi) For a chlorine dioxide disinfection facility that does not store personal protective equipment nearby, 5 points shall be assessed. R309-520-10(5)(c)

(vii) For a chlorine dioxide disinfection facility that does not have an emergency eyewash and shower immediately outside the operating area, 2 points shall be assessed. R309-520-10(3)(b)(viii)

(viii) For a chlorine dioxide disinfection facility that lacks an emergency shutoff for flows to the chlorine dioxide generator, 2 points shall be assessed. R309-520-10(3)(b)(ix)

(ix) For a chlorine dioxide disinfection facility that lacks a distinguishable alarm triggered by an ambient air chlorine dioxide sensor, 2 points shall be assessed. R309-520-10(3)(b)(v)

(x) For a chlorine dioxide disinfection facility that lacks wash down water available in the operating area, 2 points shall be assessed. R309-520-10(3)(b)(xvi)

(xi) For a chlorine dioxide disinfection facility that does not maintain the temperature of the chlorine dioxide operating area between 60 and 100°F, 2 points shall be assessed. R309-520-10(5)(d)

(xii) For a chlorine dioxide disinfection facility that lacks an Operation and Maintenance Manual including safety and emergency response procedures, 2 points shall be assessed. R309-520-10(5)(f)

(d) Ultraviolet (UV)

(i) For a UV disinfection facility that lacks an operating procedure in place to handle UV lamp breakage, power supply interruption, response to alarms, 2 points shall be assessed. R309-520-8(4)(b)

(ii) For a UV disinfection facility that does not calibrate and operate UV intensity sensors per manufacturer's instruction, 2 points shall be assessed R309-520-8(4)

(iii) For a UV disinfection facility that does not use ANSI/NSF Standard 60 chemicals in the cleaning of the UV, 25 points shall be assessed. R309-520-8(3)(j)

(iv) For a UV disinfection facility that can't isolate the UV disinfection system or each UV reactor for maintenance, 2 points shall be assessed. R309-520-8(3)(g)

(v) For a UV disinfection facility that lacks a backup power source for the UV disinfection system, 2 points shall be assessed. R309-520-8(3)(l)

(vi) For a UV disinfection facility that lacks a redundant primary disinfection mechanism, 5 points shall be assessed. R309-520-8(3)(m)

(e) Ozone

(i) For an ozone disinfection facility without a minimum of two ozone aqueous residual analyzers, 2 points shall be assessed. R309-520-9(7)(c)

(ii) For an ozone disinfection facility using chemicals that do not meet ANSI/NSF Standard 60 quench the residual ozone, 25 points shall be assessed. R309-520-9(4)(h)

(iii) For an ozone disinfection facility lacking properly functioning ozone off-gas blowers from the contactor, 2 points shall be assessed. R309-520-9(5)(b)

(iv) For an ozone disinfection facility that lacks a system for treating the final off-gas from each ozone contactor, 2 points shall be assessed. R309-520-9(5)(a)

(v) For an ozone disinfection facility discharging an ozone concentration in the gas discharge exceeding 0.1 ppm by volume, 2 points shall be assessed. R309-520-9(5)(d)

(3) Fluoridation.

(a) General

(i) For a fluoridation facility that does not calculate fluoride concentrations, including chemical dosages and total water quantities daily, 2 points shall be assessed. R309-105-14(3).

(ii) For a fluoridation facility without a fail-safe device incorporated in the fluoride feed control system to prevent overfeeding fluoride, 30 points shall be assessed. R309-535-5(3).

(iii) For a fluoridation facility that uses fluoride chemicals that do not conform to the applicable AWWA standards or with ANSI/NSF Standard 60, 25 points shall be assessed. R309-535-5.

(iv) For a fluoridation facility without scales, loss-of-weight recorders or liquid level indicators, as appropriate, 2 points shall be assessed. R309-535-5(2)(a).

(v) For a fluoridation facility without proper personal protective equipment as required in R309-525-11(10) for operators handling fluoride compounds, 10 points shall be assessed. R309-535-5(4).

(vi) For a fluoridation facility lacking a sampling location for measuring the final fluoride level, 2 points shall be assessed. R309-525-18.

(vii) For a fluoridation facility that does not have a means to measure the flow of water to be treated, 2 points shall be assessed. R309-535-5(2)(g).

(viii) For a fluoridation facility without fluoride testing equipment not properly verified or calibrated, 2 points shall be assessed. R309-525-25(4).

(ix) For a fluoride facility adding fluoride compound before lime-soda softening, 2 points shall be assessed. R309-535-5(2)(c).

(x) For a Fluoridation facility lacking cross connection control so that no direct connections exist between any sewer and a drain or overflow from the feeder, solution chamber or tank, 10 points shall be assessed. R309-525-11(9)(b)(iii).

(xi) For a fluoridation facility storing incompatible chemicals in the fluoride storage or injection areas, 10 points shall be assessed. R309-525-11(7)(a)(iv).

(xii) For a fluoridation facility lacking a floor drain to facilitate the washdown of floors, 2 points shall be assessed. R309-535-5(5)(b)

(b) Acid

(i) For a fluoridation facility without deluge showers and eye wash devices, 10 points shall be assessed. R309-535-5(4).

(ii) For a fluoridation facility lacking adequate spill containment provisions, 2 points shall be assessed R309-525-11(6)(a)(iv)(B).

(iii) For a fluoridation facility lacking a vent in the fluorosilicic acid storage units that vents to the atmosphere, 2 points shall be assessed. R309-525-11(8)(b)(vi).

(c) Dry

(i) For a fluoridation facility where the make-up water used for sodium fluoride dissolution is not treated to reduce hardness to less than 75 mg/l as calcium carbonate, 2 points shall be assessed. R309-535-5(2)(i).

(ii) For a fluoridation facility without a spring opposed diaphragm type anti-siphon device for all fluoride feed lines and dilution water lines, 10 points shall be assessed. R309-535-5(2)(f).

(iii) For a fluoridation facility with saturators that do not have a flow meter on the inlet or outlet line, 2 points shall be assessed. R309-535-5(2)(l).

(iv) For a fluoridation facility without an adequate level of fluoride crystals in the saturator, 2 points shall be assessed. R309-525-11(8)(b)(i).

(v) For a fluoridation facility without a NIOSH/MSHA certified dust respirator approved for fluoride dust removal as

required in R309-525-11(10) for operators handling dry fluoride compounds, 10 points shall be assessed. R309-535-5(4).

(vi) For a fluoridation facility where an overflow from the day tank will not drain by gravity back into the bulk storage tank or a containment system, 10 points shall be assessed. R309-525-11(8)(c)(v).

(vii) For a fluoridation facility using the sodium fluoride dry chemical where the saturators are not of the up-flow type, 2 points shall be assessed. R309-535-5(2)(l).

(viii) For a fluoride facility where fluoride chemicals stored in uncovered or opened shipping containers and are stored inside a building on pallets, 2 points shall be assessed. R309-535-5(1).

(ix) For a fluoride feed pump that is not tied directly to the well pump or service pump, 30 points shall be assessed. R309-535-5(2)(k).

(x) For a fluoridation facility lacking a vent in the dry chemical storage areas that vents to the atmosphere outside the building, 2 points shall be assessed. R309-535-5(5)(a).

(xi) For a fluoridation facility using sodium fluoride dry chemical and lacking a hopper equipped with an exhaust fan and dust filter and under a negative pressure during transfer of dry fluoride compounds, 10 points shall be assessed. R309-535-5(5)(a).

(xii) For a fluoridation facility that does not vent air from fluoride handling equipment through a dust filter to the outside atmosphere of the building for dust control during transfer of dry fluoride compounds, 10 points shall be assessed. R309-535-5(5)(a).

(xiii) For a fluoridation facility using sodium fluoride dry chemical and lacking a means of disposing of empty bags, drums or barrels handled in a manner that minimizes operators' exposure to fluoride dusts shall be assessed, 10 points. R309-535-5(5)(b).

#### (4) Filtration Treatment.

(a) For a filtration facility that does not have equipment for each individual filter to continuously monitor the effluent turbidity, 30 points shall be assessed.

(b) For a surface water filtration facility that does not have at least two filter units, each capable of meeting the plant design capacity, 20 points shall be assessed. R309-525-15(3).

(c) For a conventional surface water filtration facility that does not have the ability to filter to waste (to allow a filter to ripen before introduction finished water into the clearwell), 20 points shall be assessed.

(d) For a filtration facility where instrumentation and controls are inoperable, 2 points shall be assessed.

(e) For a filtration facility where a backwash tank is not provided with finished drinking water, 20 points shall be assessed. R309-525-15(7)(a)(ix).

(f) For a conventional surface water filtration facility where the backwash waste water is not settled prior to being recycled to the head of the treatment plant, 2 points shall be assessed. R309-525-15(7)(a).

(g) For a membrane filtration facility where automatic membrane integrity tests are not performed at least daily, 2 points shall be assessed. R309-530-8(3)(b).

(h) For a membrane filtration facility not using ANSI/NSF 60 approved chemicals, 25 points shall be assessed. R309-525-11(5)(b).

(i) For a membrane filtration facility lacking cross-connection control protection for the treatment process, 10 points shall be assessed.

#### (5) Ion Exchange

(a) For an ion exchange facility without a depth of the exchange resin at least 3 feet, 2 points shall be assessed. R309-535-8(1)(b)(iii).

(b) For an ion exchange facility using a salt for the brine solution not having an ANSI/NSF 60 certification, 25 points

shall be assessed. R309-525-11(5)(b).

(c) For an ion exchange facility make-up water inlet that lacks protection from back-siphonage, 2 points shall be assessed

(d) For an ion exchange facility where the overflow discharge piping is not protected with a corrosion resistant screen or is not terminated with a downturned bend with adequate clearance to prevent cross connection, 10 points shall be assessed. R309-525-11(9)(b).

(e) For an ion exchange facility that lacks a brine measuring tank or means of metering provided to obtain proper dilution, 2 points shall be assessed. R309-525-11(8)(b)(i).

#### (6) Sequestration

(a) For a polyphosphate sequestration facility that uses chemicals not meeting ANSI/NSF 60 certification, 25 points shall be assessed. R309-535-11(5)(d).

(b) For a sequestration facility using phosphate chemicals where total phosphate applied exceed 10 milligrams per liter as PO<sub>4</sub>, 2 points shall be assessed. R309-535-11(5)(b).

(c) For a sequestration facility that lacks sample taps located on each raw water source, each treatment unit influent and each treatment unit effluent, 2 points shall be assessed. R309-535-11(5)(d).

(d) For a sequestration facility that lacks the testing equipment for accurately measuring the phosphate dosage, 2 points shall be assessed. R309-535-11(5).

#### R309-400-8. Operator Certification.

(1) A water system that is required to have a certified operator and does not, 30 points shall be assessed.

(2) A water system where the operator is not certified at the appropriate level, 10 points shall be assessed.

(3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-300-5(5)) certified at the level of the system, 5 to 15 points shall be assessed. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level.

(4) A water system where the certified operator does not live within a one hour response time, 20 points shall be assessed.

(5) A water system may be credited up to a maximum of 20 points, which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

(a) A water system that is not required to have a certified operator and does shall be credited 10 points.

(b) A water system that has operators that are certified at a higher level than required shall be credited 10 points.

(c) A water system that has operators certified in other areas that are not required by that water system, such as treatment shall be credited 10 points.

#### R309-400-9. Cross Connection Control Program.

(1) A water system, which does not have any of the below listed components of a cross connection control program in place, 50 points shall be assessed.

(2) A water system, which only has some of the components of a cross connection control program in place, shall be assessed the following number of points:

(a) A water system which does not have local authority to enforce a cross connection control program (e.g., ordinance, bylaw or policy), 10 points shall be assessed.

(b) A water system that does not provided public education or awareness material or presentations on an annual basis, 10 points shall be assessed.

(c) A water system that does not have an operator with training in the area of cross connection control or backflow prevention, 10 points shall be assessed.

(d) A water system with no written records of cross connection control activities, such as, backflow assembly

inventory and test history, 10 points shall be assessed.

(e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions), 10 points shall be assessed.

#### **R309-400-10. Drinking Water Source Protection.**

Drinking water source protection (for ground water and surface water sources): Points shall be assessed for each source after a system fails to complete source protection requirements according to schedules or deadlines specified in R309-600 and R309-605, unless extensions have been requested from and granted by the Director. The points shall remain until such time as the violation or deficiency is corrected or resolved.

(1) For a water system that has not appointed a designated person for source protection and notified the Division, 5 points shall be assessed.

(2) For a water system that has not upgraded a Preliminary Evaluation Report to a Drinking Water Source Protection plan, 30 points shall be assessed.

(3) For a water system that has not submitted an updated Drinking Water Source Protection plan, 10 points shall be assessed.

(4) For a water system with any new (see R309-110) sources for which a Preliminary Evaluation Report has not been submitted, 150 points shall be assessed. These points shall be included with the points for an unapproved source, not added to them.

(5) For a water system that has any existing (see R309-110) sources that have come into use for which a source protection plan has not been submitted, 30 points shall be assessed.

(6) For a water system that has reconstructed or redeveloped a water source and has not submitted a revised source protection plan, 20 points shall be assessed.

(7) For a water system that has a disapproved plan, update or Preliminary Evaluation Report, 20 points shall be assessed.

#### **R309-400-11. Administrative Issues.**

Points in this area shall be assessed at the time that the failure occurs or upon notification of the Director, and shall remain until the issue is resolved unless otherwise specified.

(1) Administrative Data -

(a) A water system, that has not designated a person or organizational official responsible for the system including a current address and phone number, 10 points shall be assessed.

(b) A water system project constructed without proper plan approval, 50 to 200 points shall be assessed based on an evaluation of the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad).

(2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.

(3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.

(4) Sampling Site Plans:

(a) A water system, which does not have an adequate bacteriological sampling site plan, 5 points shall be assessed.

(b) A water system, which does not have a lead/copper sampling site plan, 10 points shall be assessed.

(5) Customer Complaint:

(a) 25 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:

(i) Turbidity;

(ii) Pressure;

(iii) Taste and Odor;

(iv) Sickness (water suspected); and

(v) Waterborne Disease Outbreak (R309-104-9).

(vi) Periods of Water Outage

(b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.

(c) In the case of a documented waterborne disease outbreak, the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.

(d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Director and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.

(6)(a) The Director may issue directives to a water system that include, but are not limited to the following:

(i) Administrative Orders;

(ii) Rule defined action;

(iii) Rule defined compliance schedule;

(iv) Variance/Exemption requirements;

(v) Bilateral Compliance Agreement;

(vi) Notice of Violation and Compliance Order; and

(vii) Compliance Action/Enforcement Order.

(b) If the water system does not comply with the directive, the Director may assess 25 to 200 points to the water system. Points shall be assessed based upon the severity of the non-compliance, the threat to public health and the underlying basis for the original directive.

(7) Data Falsification - The Director may assess a water system points for data falsification. The water system may be assessed 25 to 200 points for each occurrence based upon:

(a) the severity of the falsification;

(b) the threat to public health;

(c) the intent of the water system personnel; and,

(d) the type of falsification.

(i) Reports only good data

(ii) Doctored results from the laboratory

(iii) Non-valid sample

Data reported to the Director includes but is not limited to Water Treatment Plant Reports, Disinfection Reports, bacteriological and chemical analyses, and Annual Reports. This assessment of points shall be in addition to any other penalty provided by law.

(8) Water Hauling:

(a) For a community water system that is hauling water as a permanent method of culinary water distribution, 150 points shall be assessed. R309-550-10(1).

(b) For a non-community system that is hauling water as a permanent method of culinary water distribution without approval from the director, 150 points shall be assessed. R309-550-10(2).

(c) For a water system, which has been granted an exception to haul water, if any part of the water hauling guidelines is not followed, 50 points shall be assessed. R309-550-10.

#### **R309-400-12. Reporting and Record Maintenance Issues.**

Points may be assessed for failure to provide required reports to the Director by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on

record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report, 100 points shall be assessed.

(2) Quarterly Reports:

(a) For each failure to report the quarterly disinfection report, 50 points shall be assessed.

(3) Annual and Other Reports:

(a) A public water system that fails to submit water use data required by a state agency or fails to verify the accuracy of the data by including a certification by a certified operator or a professional engineer performing the duties of a certified operator shall be assessed 50 points.

(b) Community water systems that fail to send a certification to the Division stating how the consumer confidence report was distributed to its customers as required in R309-225-7(3), 10 points shall be assessed.

(c) Community water systems that fail to mail a copy of the consumer confidence report to the Division as required in R309-225-7(3), 10 points shall be assessed.

(d) A public water system that fails to submit operational reports or other reports required by the Division shall be assessed 20 points.

**KEY: drinking water, environmental protection, water system rating, penalties**  
**November 22, 2016**  
**Notice of Continuation March 13, 2015**

**19-4-104**

### **R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

#### **R315-101. Cleanup Action and Risk-Based Closure Standards.**

##### **R315-101-1. Purpose, Applicability.**

(a) Purpose. R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. The procedures in this rule also provide for continued management of sites for which minimal risk-based standards cannot be met.

##### **(b) Applicability.**

(1) R315-101 is applicable to any responsible party involved in management of a site contaminated with hazardous waste or hazardous constituents. This rule does not apply to a site that has been or will be cleaned to background.

(2) In the event of a release of hazardous waste or material which, when released, becomes hazardous waste, these requirements apply if the responsible party fails to clean up all the released material and any residue or contaminated soil, water or other material resulting from the release as required by R315-263-31. If the level of risk present at the site is below  $1 \times 10^{-6}$  for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the requirements of R315-9-3 shall be considered met.

(3) The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of 40 CFR 265.110 through 120, incorporated by reference in Rule R315-265, and Sections R315-264-110 through 120 prior to implementation of any activities described in R315-101. The requirements of Subsections R315-270-1(c)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below  $1 \times 10^{-6}$  for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Director for review.

(4) If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Director determines that ecological effects may be significant, then a risk-based closure will not be granted and appropriate management will be required and may include corrective action, post-closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:

(a) The impact or potential impact of the contamination on the human health;

(b) The impact or potential impact of the contamination on the environment;

(c) The technologies available for use in clean-up; and

(d) Economic considerations and cost-effectiveness of clean-up options.

##### **R315-101-2. Stabilization.**

The responsible party must immediately take appropriate action to stabilize the site either through source removal or source control. After the responsible party has attempted to complete the requirements of Sections R315-263-30 through 33 and the Director determines that additional work is needed to stabilize the site, the Director will notify the responsible party that additional work is necessary and provide the responsible

party with objectives to be addressed in developing a work plan to further stabilize the site. The work plan shall be submitted to the Director for review and approval within fifteen days of receiving notification that additional work will be necessary to complete the emergency actions required by Sections R315-263-30 through 33. Work plans shall be of a scope commensurate with the work to be performed and site-specific characteristics. This work plan shall include a description of the interim measure and how it will meet the criteria of source removal or source control. The implementation of the work plan shall be according to the schedule contained within the approved plan. All interim measures shall be at the expense of the party responsible for the site. If the party responsible for the site fails to take the measures required for stabilizing the site, the Director may request the Executive Director of the Department to take abatement and cost recovery actions as provided in Section 19-6-301, et seq., Utah Hazardous Substances Mitigation Act.

##### **R315-101-3. Principle of Non-degradation.**

When closing or managing a contaminated site, the responsible party shall not allow levels of contamination in groundwater, surface water, soils, and air to increase beyond the existing levels of contamination at a site when site management commences. The responsible party will demonstrate compliance with this policy by submitting appropriate monitoring data or other data as may be required by the Director. If at any time the level of contamination increases, the responsible party shall take immediate corrective action to prevent further degradation of any medium.

##### **R315-101-4. Site Characterization.**

The following information shall be collected to characterize the site, and define site boundaries and Area(s) of Contamination:

(a) A legal description of the site;

(b) Historical land use and ownership of the site;

(c) Topographical map(s) of sufficient detail, scale, and accuracy to depict and locate all past and current physical structures including all building(s) and waste activities at the site;

(d) Information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, and hydrogeological conditions;

(e) An inventory of all current and past wastestreams managed at the site, including process descriptions and suspected contamination source information;

(f) Background levels of suspected hazardous constituents based on the inventory as determined in R315-101-4(e) in media of concern, e.g. sediments, soil, groundwater, surface water, and air which are representative of the site; and

(g) Location and boundaries of all Area(s) of Contamination, including concentrations, types and extent of hazardous constituents. Media to be sampled may include sediments, soil, groundwater, surface water, and air, as applicable.

##### **R315-101-5. Health Evaluation Criteria, Risk Assessment.**

###### **5.1 REQUIRED STUDY**

(a) When conducting the risk assessment the responsible party will use all applicable site characterization data and shall consider the following parameters when conducting the risk assessment:

(1) Identification, concentration, and distribution of all suspected hazardous constituents identified in R315-101-4(e);

(2) All area(s) of contamination at the site;

(3) Fate of contaminants and pathways of contaminant transport; and

(4) Potentially exposed populations.

## 5.2 CHARACTERIZATION AND EVALUATION OF RISK

(a) The responsible party shall conduct a risk assessment which includes the following:

(1) The concentration term "C" for each medium for each hazardous constituent identified in R315-101-5.1(a)(1);

(2) Evaluation of the fate of contaminants and of all pathways of contaminant transport identified in R315-101-5.1(a)(3);

(3) Exposure assessment identifying the RME for all exposure pathways, intakes, and identified constituents;

(4) Current toxicity information for carcinogenic and noncarcinogenic effects;

(5) Risk characterization identifying carcinogenic risk, individual and multiple substances, and noncarcinogenic hazardous index, individual and multiple substances;

(6) An ecological evaluation which provides for terrestrial and aquatic processes; and

(7) Current toxicity information for all the constituents and biological processes relevant to the ecological evaluation.

(b) The risk assessment shall be conducted using one or both of the standard exposure scenarios listed below, as needed to determine site management options:

(1) Residential. This exposure scenario includes ingestion of water (must include surface water and ground water regardless of water quality), ingestion of soil and dust, ingestion of contaminated and potentially contaminated food, inhalation of contaminants, dermal contact with chemicals in soil, and dermal contact with chemicals in water for a human being ages zero through 70 years old using the equations and default variable values found in the Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual Supplemental Guidance, "Standard Default Exposure Factors", Interim Final, OSWER Directive 9285.6-03, March 25, 1991 or most recent edition;

(2) Actual land use conditions or potential land use conditions based upon applicable zoning and future land use planning considerations, if potential land use conditions offer a more protective exposure scenario than actual land use conditions. This exposure scenario involves an assessment based on actual site conditions using standard default variable values. The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site-specific physical and chemical information, and the assumption that contaminated media will not have undergone any remedial engineering.

## 5.3 DATA PRESENTATION

(a) A risk assessment report shall be submitted to the Director and must include at a minimum the following:

(1) An executive summary;

(2) An overview of the site and the areas of contamination;

(3) A site characterization report which includes:

(i) Maps of sufficient detail and accuracy to depict areas of contamination, topography, geology, and groundwater contours or potentiometric surface;

(ii) Site and regional geological and hydrological descriptions;

(iii) A detailed discussion of areas of contamination;

(iv) Background levels of hazardous constituents including details of statistical methods used to determine background; and

(v) Descriptions of releases of hazardous constituents and expected extent of migration from the area of contamination.

(4) Identification and concentration of hazardous constituents identified in R315-101-5.1(a)(1). A sampling and analysis plan shall be prepared and utilized for the collection of all data. This plan shall be developed using procedures and methods outlined in Section R315-261-1090 and the most current version of "SW-846, Test Methods for Evaluating Solid Waste." It shall contain a summary outlining data quality

objectives, completed analytical request forms for all analysis performed, dry weight equivalents, sampling location identification and justification, standard operating procedures used for data collection, all statistical analysis performed, quality assurance and quality control plans (QA/QC plan) and QA/QC results, instrument calibration results, and analytical methods including constituent detection limits;

(5) Exposure assessment identifying exposure levels for all exposure pathways identified in R315-101-5.2(a)(3). If fate and transport models are used, the users manual, model theory, computer software for the model, installation verification data set for the model and parametric analysis of the input parameters must be provided upon request of the Director;

(6) Identification of toxicity information gathered for all identified hazardous constituents for carcinogenic, slope factors and weight-of-evidence classification, noncarcinogenic effects, chronic reference doses (RfDs) and critical effects associated with RfDs from, in order of preference, the Integrated Risk Information System (IRIS), Health Effects Assessment Summary Tables (HEAST), Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles, Environmental Criteria and Assessment Office (ECAO), or other scientifically accepted listings. The source and date of the toxicological information must be identified and be acceptable to the Director;

(7) The risk characterization identifying carcinogenic risk, individual and multiple substances, noncarcinogenic hazardous index, individual and multiple substances, chronic hazard quotient, subchronic hazard quotient, uncertainties, and a tabulation of all risk characterization data presented in a format approved by the Director; and

(8) Unless justification is provided to the Director, and a waiver of this requirement is granted by the Director in writing, an ecological assessment of the site which contains at least the following:

(i) An inventory of the current biological community;

(ii) Estimates of ecological effects based on a subset of ecological endpoints;

(iii) The magnitude and variation of toxic effects; and

(iv) Identification of extent of effects, specifically from the presence of hazardous waste.

(b) If the risk assessment report does not contain all required information of sufficient quality and detail, the Director will notify the responsible party in writing of the deficiencies and require resubmittal of the report in a designated time frame.

(c) If the risk assessment report contains all required information of sufficient quality and detail, the Director will approve the risk assessment report in writing.

## **R315-101-6. Risk Management: Site Management Plan and Closure Equivalency.**

(a) A site management plan which is supported by the findings in the approved risk assessment report shall be submitted to the Director within 60 days of approval of the risk assessment report. This plan may be submitted along with the risk assessment report and must include a schedule for implementation.

(b) The Director shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Director finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Director within an appropriate time frame as specified by the Director. The Director shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Director shall follow the requirements of R315-101-7 prior to issuance of final approval. The approved site management plan shall be

implemented according to the approved schedule. If the Director rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Director in a statement of disapproval.

(c)(1) The site management plan may contain a no further action option only if the level of risk present at the site is below  $1 \times 10^{-6}$  for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of Subsections R315-270-1(c)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below  $1 \times 10^{-6}$  for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to  $1 \times 10^{-6}$  for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.

(d) If the level of risk present at the site is less than  $1 \times 10^{-4}$  for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to  $1 \times 10^{-6}$  for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the site management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post-closure care, as determined on a case-by-case basis in accordance with criteria identified in R315-101-1(b)(4).

(e) The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to  $1 \times 10^{-4}$  for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Director concludes that corrective action is required to mitigate ecological effects based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.

(f) If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of Section R315-264-94, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for those constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.

#### **R315-101-7. Public Participation.**

(a) The Director may provide for public participation in all phases of the cleanup action process, as defined in R315-101-4 through R315-101-6. As directed by the Director and based on the circumstances and level of public interest at the site,

pertinent work plans shall describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example, public meetings, hearings, or comment periods. The Director shall also provide public notice, a public comment period, and public hearing(s) for the site management plan in accordance with Sections R315-124-10 through 12 and 17.

#### **R315-101-8. Cleanup/Management Action.**

(a) Upon approval of the site management plan by the Director, all remedial activities at the site shall proceed according to the schedule established in the approved site management plan using the method(s) described therein.

(b) Cleanup/Management Report. The Cleanup/Management Report shall detail remediation, treatment, and monitoring activities undertaken at the site by the responsible party as required by the approved site management plan. If the Cleanup/Management Report provides analytical data as evidence that levels of contamination at the site meet the requirements established in the site management plan for a risk-based closure or no further action as defined in R315-101-6(c)(2), the responsible party shall submit a certification of completion as outlined in R315-101-8(c), or request risk-based closure as outlined in Subsection R315-270-1(c)(6), whichever is applicable.

(c) Certification of Completion. Within 60 days of the completion of all activities documented in the Cleanup/Management Report, a Certification of Completion of Cleanup/Management Action shall be submitted to the Director by registered mail. The certification of completion shall state the site has been managed in accordance with the specifications in the approved Site Management Plan and shall be signed by the responsible party and by an independent Utah registered professional engineer.

(d) Oversight.

(1) The Director or his representatives shall have access to the site as described in Section R315-260-5 and at all times when activity pursuant to R315-101 is taking place. The Director or his representatives may take samples or make records of any visit to the site by photographic, electronic, videotape or any other reasonable means.

(2) The Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Director at least seven days prior to any sampling event or remediation activity.

#### **KEY: hazardous waste**

**April 25, 2013**

**Notice of Continuation March 10, 2016**

**19-6-105**

**19-6-106**

**R384. Health, Disease Control and Prevention, Health Promotion.****R384-205. Opiate Overdose Outreach Pilot Program.****R384-205-1. Authority and Purpose.**

This rule establishes procedures and application processes pursuant to Title 26 Chapter 55 Opiate Overdose Response Act for the Utah Department of Health. Funding will provide for the purchase of an opiate antagonist; and/or for the cost of training on the proper administration of an opiate antagonist, in response to an opiate-related drug overdose event.

**R384-205-2. Definitions.**

- (1) The following definitions apply to this rule:
- (a) "Department" means the Utah Department of Health Violence and Injury Prevention Program.
  - (b) "Harm Reduction" means services that are aimed at reducing negative consequences associated with drug use.
  - (c) "High risk populations" means tribal communities, rural communities, geographic areas and/or populations with significantly high rates of opioid abuse, misuse, or overdose.
  - (d) "Opiate antagonist" is as defined in Subsection 26-55-102(8).

**R384-205-3. Application Process.**

(1) The Department will establish an Opiate Overdose Outreach grant application process and packet on an annual basis, as funding is available. The packet will include the review schedule, submission details, review criteria and eligibility details. The application packet with all details will be posted on the Utah Department of Health Violence and Injury Prevention Program website.

**R384-205-4. Criteria for Application for the Opiate Overdose Outreach Pilot Program.**

- (1) Eligible applicants may include organizations as defined in Subsection 26-55-107(1) which includes organizations that provide harm reduction services, and an overdose outreach provider as defined in Subsection 26-55-102(10)(e),(f)and(g).
- (2) Additional weight for awarding a grant will be given based on applicant's ability to demonstrate:
- (a) how they will serve high risk populations and
  - (b) size of population served.

**R384-205-5. Criteria for Funding Allocation.**

- (1) The Department shall select a grant allocation committee. The committee will include five professionals from one or more of the following professions:
- (a) health care,
  - (b) pharmacy,
  - (c) public health, and
  - (d) emergency medical services.
- (2) The committee will review the applications and assign a score based on the following evaluation criteria of the application:
- (a) Demonstrated burden and identified target audience,
  - (b) Capacity to reach target audience,
  - (c) Ability to operate under deadline, and
  - (d) Detailed budget breakdown.
- (3) Allocation of funding for each application will be based upon the criteria outlined in the Scope of Services and Requirements section of the grant application.
- (4) Applicant's funding request shall meet the criteria stated in Subsection 26-55-107(7)(b)(ii) as it relates to training costs.
- (5) Funding will be allocated according to applicant scores.

**R384-205-6. Report Requirements.**

The grantee shall submit an annual report to the Department in accordance to Subsection 26-55-107(7)(d).

**R384-205-7. Audit Provisions.**

The grantee shall record, preserve, and make data available for audit by the Department. The retention schedule shall be according to that specified in the application packet when applying for funding.

**KEY: opioids, naloxone, overdoses, prescription drugs**  
**November 7, 2016 26-55-107**

**R386. Health, Disease Control and Prevention, Epidemiology.****R386-900. Special Measures for the Operation of Syringe Exchange Programs.****R386-900-1. Authority.**

This rule is authorized under Utah Code 26-7-8.

**R386-900-2. Purpose.**

This rule establishes operating and reporting requirements required of an entity operating a syringe exchange pursuant to 26-7-8.

**R386-900-3. Definitions.**

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health Bureau of Epidemiology Prevention, Treatment and Care Program.

(2) "Syringe exchange" is defined in 26-7-8.

(3) "Operating entity" is defined in 26-7-8.

(4) "HIV" human immunodeficiency virus.

(5) "HCV" hepatitis C virus.

(6) "HBV" hepatitis B virus.

(7) "Opiate antagonist" is defined by Chapter 55, Opiate Overdose Response Act.

**R386-900-4. Operating Requirements.**

(1) An operating entity shall utilize the department's enrollment form to provide written notice of intent to conduct syringe exchange activities to the department 15 days prior to conducting syringe exchange activities. If an operating entity discontinues syringe exchange activities, written notice shall also be submitted utilizing the department's report form within 15 days of termination of activities to the department.

(2) An operating entity must submit a safety protocol to the department for the prevention of needlestick and sharps injury before initiating syringe exchange activities.

(3) An operating entity shall submit a sharps disposal plan to the department. Sharps disposal is the financial responsibility of the entity operating and responsible for the syringe exchange program.

(4) An operating entity shall facilitate the exchange of an individuals used syringes by providing a disposable, medical grade sharps container for the disposal of used syringes.

(5) The operating entity shall exchange one or more new syringes in sealed sterile packages to the individual free of charge.

(6) As available, the department will provide syringes, education materials, and other resources to entities operating a syringe exchange program.

(7) An operating entity must provide and make available to all recipients of new syringe(s) verbal and written instruction on:

(a) Methods for preventing the transmission of blood borne pathogens, including HIV, HBV and HCV;

(b) Information and referral to drug and alcohol treatment;

(c) Information and referral for HIV and HCV testing; and

(d) How and where to obtain an opiate antagonist.

**R386-900-5. Reporting Requirements.**

(1) All entities operating a syringe exchange program shall report aggregate data elements in accordance to 26-7-8 to the department on a quarterly basis, utilizing the format provided by the department which is to include:

(a) Number of individuals who have exchanged syringes,

(b) A self-reported or approximated number of used syringes exchanged for new syringes,

(c) Number of new syringes provided in exchange for used syringes,

(d) Educational materials distributed; and

(e) Number of referrals provided.

**R386-900-6. Penalty.**

(1) Any person who violates any provision of R386-900 may be assessed a penalty as provided in section 26-23-6.

**R386-900-7. Official References.**

(1) Centers for Disease Control and Prevention (CDC), 2016, Program Guidance for Implementing Certain Components of Syringe Services Programs.

(2) Federal Register, Health and Human Services Department, 2011, Determination That a Demonstration Needle Exchange Program Would be Effective in Reducing Drug Abuse and the Risk of Acquired Immune Deficiency Syndrome Infection Among Intravenous Drug Users.

(3) Harm Reduction Coalition, 2006, Syringe Exchange Programs and Hepatitis C.

(4) Harm Reduction Coalition, 2006, Syringe Exchange Programs: Reducing the Risks of Needlestick Injuries.

(5) Substance Abuse and Mental Health Services Administration (SAMHSA), Summary of Syringe Exchange Program Studies.

(6) United States Department of Health and Human Services (HHS), 2016, Implementation Guidance to Support Certain Components of Syringe Services Programs.

(7) World Health Organization (WHO), 2004, Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users.

**KEY: syringe exchange programs, needles, syringes**

**November 7, 2016**

**26-7-8**

**R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.**

**R388-805. Ryan White Part B Program.**

**R388-805-1. Authority and Purpose.**

This rule governs program eligibility, benefits, and administration by the Department for the Ryan White HIV/AIDS Treatment Extension Act of 2009 Part B Program (Ryan White Part B Program). It is authorized by Section 26-1-5; Section 26-1-15; Section 26-1-18; and Section 26-1-30(2)(a), (b), (c), and (g).

**R388-805-2. Definitions.**

The following definitions apply to this rule:

- (1) "HIV" means Human Immunodeficiency Virus.
- (2) "Department" means the Utah Department of Health.
- (3) "Client" means an individual who meets the eligibility criteria and is enrolled in the Ryan White Part B Program pursuant to the provisions of this rule.

**R388-805-3. Nature of Program and Benefits.**

(1) The Ryan White Part B Program provides reimbursement to providers for services rendered to HIV positive individuals who meet the eligibility requirements. The Ryan White Part B Program provides limited services as described in this rule. The Department provides reimbursement coverage under the program only for services for each program:

- (a) as provided in law governing the Ryan White HIV/AIDS Treatment Extension Act of 2009;
- (b) to the extent that it has agreed to reimburse providers with whom it contracts to provide services; and
- (c) as limited in its agreements or contracts with providers.

(2) Within available funding, the Department provides Core Medical and Supportive Services as allowable under the legislation;

(a) The AIDS Drug Assistance Program (ADAP) provides HIV related medications, health insurance premium, and cost-sharing assistance.

(b) Supportive Services Program provides a variety of supportive services that enable the client to access medical care as well as to retain the client in medical care.

(3) The Department may adjust the services available to meet current needs and fluctuations in available funding.

(4) The Ryan White Part B Program is not health insurance. A relationship with the Department as the insurer and the client as the insured is not created under this program.

**R388-805-4. Providers.**

The Department reimburses only providers who contract with the Department to provide services under the program.

**R388-805-5. Reimbursement.**

(1) The Department shall reimburse only for services as limited in its agreements or contracts with providers.

(2) The Department shall reimburse providers according to the fee schedule or budgets that are made part of its agreements or contracts with providers.

(3) The Ryan White Part B Program is the payer of last resort. The Department does not pay for services under the Ryan White Part B Program for which an individual is eligible to receive under any other primary payer source.

**R388-805-6. Ryan White Part B Program Eligibility.**

(1) To receive services under the Ryan White Part B Program, an individual must physically reside in Utah, must have a medical diagnosis of HIV infection as verified by the individual's physician, and may not own more than one home and one registered vehicle.

(2) To receive Core Medical and Supportive Services, excluding Case Management services, an individual must not

have gross annual household income exceeding 250% of the federal poverty level.

(3) To be eligible to receive assistance from the AIDS Drug Assistance Program, including health insurance premium and cost-sharing assistance an individual must have a prescription for the medication requested.

(4) Clients must re-certify semi-annually in order to continue program participation.

**KEY: treatment and care, HIV/AIDS, ADAP, Ryan White Part B Program**

**November 30, 2016** 26-1-5

**Notice of Continuation September 30, 2016** 26-1-15

26-1-18

26-1-30(2)(a), (b), (c), (g)

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-100. Food Service Sanitation.****R392-100-1. Authority and Purpose.**

(1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

**R392-100-2. Incorporation by Reference.**

(1) The Department incorporates by reference the following:

(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.

(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.

(2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:

- (a) Subsection 5-203.15(B);
- (b) Subsections 5-402.11(B), (C) and (D);
- (c) Subsections 8-302.14(D) and (E);
- (d) Subsection 8-304.11(K);
- (e) Annex 1, Section 8-905.40;
- (f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);
- (g) Annex 1, Section 8-909-20;
- (h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).

(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.

(a) In section 1-201.10(B), Terms Defined, a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:

(i) Core Item(1) is amended to read:

"(1) "Core Item" also referred to as "non-critical" means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."

(ii) Food Establishment(2) is amended to add paragraph (C) to read:

"(2)(c) Catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."

(iii) A definition of Potentially Hazardous Food is added to read:

"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."

(iv) Priority Item(1) is amended to read:

"(1) "Priority Item" also referred to as "critical 1" means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with food borne illness or injury and there is no provision that more directly controls the hazard."

(v) Priority Foundation Item(1) is amended to read:

"(1) "Priority Foundation Item" also referred to as "critical 2" means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."

(b) After section 2-102.12, a new section is added to read:

"2-102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26-15a, UCA and R392-101. Food employees shall be trained in food safety as required under Section 26-15-5 and shall hold a valid food handler's card issued by a local health department."

(c) Paragraph 3-201.16(A) is amended to read:

"(A) Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(d) Section 3-501.17 is amended to include additional paragraph (H):

"(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:

(1) before which food must be used as specified in paragraph (A) of this section; or

(2) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) is amended to read:

"(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:

(a) the time food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) After Section 4-204-123 a new section is added to read:

"4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(g) Section 5-101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(h) Section 5-202.13 is deleted and replaced to read:

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters ( 1 inch).

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(i) Paragraph 5-203.15(A) is amended to read:

"(A) If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from any copper in the water supply."

(j) Paragraph 5-402.11(A) is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(k) Section 8-103.10 Modifications and Waivers is amended to read:

"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment."

(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Section 8-103.11 is amended to add paragraph (D) to read:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times."

(m) Paragraph 8-302.14(C) is amended to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Paragraph 8-304.10(A) is amended to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(o) Paragraph 8-401.10(A) is amended to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(p) Subparagraph 8-401.10(B)(2) is amended to read:

"(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

(q) Section 8-501.10 is amended to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(r) Annex 1, Section 8-601.10 is amended to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(s) Annex 1, Section 8-801.30 is amended to read:

"Service is effective at the time the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(t) Annex 1, Section 8-903.10 is amended to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a

hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of this code."

(u) Annex 1, Section 8-903.60 is amended to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(v) Annex 1, Section 8-903.90 is amended to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(w) Annex 1 Section 8-904.30 heading is amended to read:

"8-904.30 Contents of the Summary Suspension Notice."

(x) Annex 1, Paragraph 8-905.10(A) is amended to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(y) Annex 1, Section 8-905.20 is amended to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(z) Annex 1, Subparagraph 8-905.50(A)(1) is amended to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

(aa) Annex 1, Subparagraph 8-905.50(A)(2) is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

(ab) Annex 1, Section 8-905.60 heading is amended to read:

"8-905.60 Notice of Hearing Contents."

(ac) Annex 1, Section 8-905.80 heading is amended to read:

"8-905.80 Expeditious and Impartial Hearing."

(ad) Annex 1, Section 8-905.90 heading is amended to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ae) Annex 1, Paragraph 8-905.90(A) is amended to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or

mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(af) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(ag) Annex 1, Section 8-907.60 is amended to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(ah) Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(ai) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is amended to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."

(aj) Annex 1, Section 8-913.10 headline is amended to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(ak) Annex 1, Paragraph 8-913.10(B) is amended to read:

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding \$5,000."

(al) Annex 1, Section 8-913.10 is amended to add the paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

### **R392-100-3. Construction Standards.**

(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

#### **KEY: public health, food services, sanitation**

**May 23, 2016**

**Notice of Continuation November 7, 2016**

**26-1-30(2)**

**26-15-2**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools.****R392-200-1. Authority and purpose of Rule.**

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation, sanitation, and safety of schools.

**R392-200-2. Applicability, Responsibility for Compliance.**

(1) The provisions of this rule are applicable to the design, construction, operation, maintenance, safety, health, and sanitation of schools, their grounds, and accessory structures.

(2) The governing body of the school, shall ensure that the school building and grounds are constructed, operated, and maintained in accordance with this rule.

(3) This rule does not require a construction change in any portion of a school if it was constructed and in compliance with law in effect at the time the school was built except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that conditions in any school are a threat to the health of persons using the school, the Executive Director or the Local Health Officer may order correction of any condition that impairs or endangers the health or life of those attending schools. The Executive Director or Local Health Officer may allow temporary measures to ameliorate the problem for up to a year until the governing body can make a permanent correction.

**R392-200-3. Definitions.**

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Director" means the Executive Director of the Utah Department of Health, or designated representative.

(3) "Governing Body" means the board of education, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the school.

(4) "Instructor" means any volunteer or employee educator, licensed or not licensed, responsible for student education at a private or public school.

(5) "Local Health Officer" means the health officer of any county or district health department, or designated representative.

(6) "School" means any public or private educational institution including charter schools, elementary schools, middle schools, and secondary schools established to provide education for grades kindergarten through 12 regardless of student's age, including attached pre-schools, but excluding home schools.

(7) "Toxic" means any chemical or biological agent the exposure to which may cause an acute or chronic health hazard.

**R392-200-4. Site Standards.**

(1) Prior to developing plans and specifications for a new school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments regarding environmental health and safety issues to avoid unreasonable risks to the health and safety of students, school staff, and faculty.

(2) The school site shall be located to minimize the negative influence of railroads, freeways, highways, heavy traffic roads, industrial areas, airports and aircraft flight patterns, fugitive dust, odors, or other areas where auditory problems, malodorous conditions, or safety and health hazards exist.

**R392-200-5. School Grounds.**

(1) School ground fencing shall be constructed of smooth materials with no barbs or projections and shall be maintained in good repair.

(2) Mechanical equipment, electrical transmission lines, poles, transformer boxes, and other electrical equipment shall be located or protected with a barrier to prevent an electrical or other safety hazard.

(3) Walkways shall be provided between the school building and other buildings on the school grounds. Walkways shall be graded to allow proper drainage, and allow for safe passage. Walkways and parking areas shall be maintained in good repair and free of a buildup of snow and ice.

(4) Illuminance at a minimum of 1 foot candle shall be provided for walkways, building entrances, parking areas, roads, and similar areas, during hours of use.

(5) With the exception of "pop up heads", elevated lawn sprinkler heads shall not be permanently installed and shall not be left in place on playgrounds or other recreational areas.

(6) Service roads, parking areas, and walkways on school property shall be constructed and located to facilitate the safe movement of vehicular and pedestrian traffic. Student drop off and pick up zones must maximize safety.

(7) The governing body shall control health and safety risks on school property by removing items that are likely to be a source of risk such as weeds, holes, broken glass, or broken or cut tree limbs and by filling or covering excavations or ditches.

(8) Playgrounds must be located in areas that maximize safety. The governing body shall provide personnel so that playgrounds are adequately supervised during recess and school sponsored outdoor time. Playground equipment, if provided, shall be located to permit supervision.

(9) The governing body shall minimize the likelihood of students' contact with stray animals using methods such as the installation of fencing at elementary schools and taking appropriate actions to have removed any stray animals found on the school property. Animals brought by students or teachers for instruction or demonstration purposes are allowed if controlled in a manner that protects students and, if a vaccine is available for that species, the animal has been vaccinated for rabies. Police enforcement dogs, and service animals on duty under the Americans with Disabilities Act or under the provisions of an individualized education plan made pursuant to the Individuals with Disabilities Education Act are allowed on the school grounds.

(10) If bicycles are permitted at a school, the governing body shall ensure that a designated area for bicycle parking is provided and located where it will not create a safety hazard by obstructing building entry or exit ways, walkways, or vehicular traffic.

(11) Structures or landscaping must not provide access by unauthorized individuals to the roof of the school.

**R392-200-6. Food Service.**

(1) The design, construction, installation, and operation of food service facilities and equipment shall be in compliance with the Food Service Sanitation Rule R392-100 and local health department regulations. Plans for food service facilities must be submitted by the governing body to the local health department for evaluation and approval prior to the beginning of construction. Any significant modification to the school food service facility that falls within the plan review requirements of R392-100 must be approved by the local health department prior to modification.

(2) The governing body shall ensure that food provided by the school that is not prepared on site is obtained, transported, and served from approved sources as required by R392-100.

**R392-200-7. Sanitary Facilities and Controls.**

(1) Water Supply.

(a) The water supply shall meet the requirements of the Utah Department of Environmental Quality. All bottled water supplied or sold by the school shall meet the bottled water

requirements of the Utah Department of Agriculture and Food.

(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing water supply interruption. If the water supply is estimated to be or actually interrupted for four hours or more, the local health officer may require the school to close or have the school provide an alternative source of potable water approved by the local health department.

(2) Wastewater.

(a) The governing body shall ensure that all wastewater or water-carried wastes such as water from cleaning garbage cans and dumpsters is disposed of in accordance with rules established by the Utah Department of Environmental Quality.

(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing sewer system interruption. If the sewer system is estimated to be or is actually interrupted for four hours or more the local health officer may require the school to be closed or require the school to provide temporary toilet facilities or an alternate wastewater disposal method approved by the local health department and the Utah Department of Environmental Quality.

(3) Plumbing. The governing body shall ensure that plumbing is sized, installed, and maintained in accordance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah legislature under Section 15A-2-103 and the 2010 Americans with Disability Act (ADA).

(4) Toilet Rooms.

(a) Toilet rooms shall be in compliance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah Legislature under Section 15A-2-103 and the 2010 ADA. With the exception of faculty or staff restrooms, locked toilet rooms are prohibited unless students have access to the number of unlocked toilet rooms as required under the aforementioned plumbing code or the 2010 ADA, whichever is the most stringent or restrictive of the two.

(b) Self-closing entrance doors shall be provided if privacy is not achieved using shielding to break the line of vision of a person looking into the toilet room from outside the toilet room.

(c) If a toilet room is designed for use by more than one person at a time, each toilet therein shall be enclosed on all four sides by a separate stall. The height of the stalls shall allow sufficient light or ventilation therein. The stall partitions and door shall be at least 16 inches from the floor. A urinal is exempt from the requirements for a stall; however, where there are two or more adjacent urinals, there shall be a solid partition between adjacent urinals that extends at least 18 inches from the wall.

(d) In new or extensively remodeled schools, toilet rooms shall be mechanically vented to the outside of the building. A system shall be installed to resupply the air that is exhausted.

(e) An easily cleanable waste container shall be provided and maintained in each toilet room. At least one conveniently located covered waste receptacles must be provided in toilet rooms used by females nine years and older. Assigned school or contracted personnel shall empty each waste container as often as necessary and at least daily.

(f) All toilet room fixtures shall be kept clean and maintained in good repair.

(g) Toilet fixtures shall be provided with a supply of toilet tissue at all times.

(h) Toilet rooms must be easily accessible and conveniently located for use at all times the school is in session or used for school approved activities, for all school recreational facilities, and for areas utilized for school functions.

(i) Toilet room walls, floors, and ceilings must be constructed of smooth, non-absorbent, easily cleanable materials. Assigned school or contracted personnel shall keep

toilet room walls, floors, and ceilings clean and maintained in good repair.

(5) Diaper Changing.

(a) A school attended by students who require changing of diapers by school or designated personnel must have a designated diaper changing area.

(b) The diapering area shall not be located in a food preparation or eating area.

(c) The diapering surface must not be used for any other purpose. The diapering station shall have a solid, smooth, non-absorbent surface kept in good repair.

(d) Child and student diapering stations shall be designed with a raised edge to prevent a child or student from rolling off or falling.

(e) A privacy area for individuals older than three years of age requiring diaper change must be provided for diaper changing.

(f) The governing body shall make sure that the school staff members who perform diapering tasks comply with the following requirements:

(i) Staff members who prepare or serve food shall not change diapers or assist in toilet training.

(ii) Staff members shall not diaper children directly on the floor.

(iii) Staff members shall not leave a child or student unattended on the diapering surface.

(iv) Staff members shall clean and sanitize diapering surfaces after each use, shall use a sanitizer registered by the U.S. Environmental Protection Agency for that purpose and according to the manufacturer's instructions, and shall make sure sanitizer containers are properly labeled and stored in the diaper changing area out of the reach of children and students.

(v) If a disposable covering is used on the diapering surface, a staff member shall properly dispose of the covering after each diaper change.

(vi) Staff members shall wash their hands with soap and water immediately after changing a diaper, and before commencing other tasks.

(vii) Staff members shall place soiled disposable diapers in a container that has a leak proof lining and a tight fitting lid, in a leak proof sealed bag and placed in a container with a tight fitting lid, or placed directly in an outdoor garbage container that has a tight fitting lid. Staff shall clean and sanitize on a daily basis the containers where soiled diapers are placed.

(viii) If cloth diapers are used, staff members shall not rinse them at the school. After a cloth diaper is changed, a staff member shall place the cloth diaper directly into a leak-proof container or into a sealed bag and placed in a container. The container shall be inaccessible to any child and labeled with the child's name. The staff member may also place the diaper into a leak-proof diapering service container.

(ix) A staff member shall check each child's diaper at least once every two hours and shall change any child's diaper promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

(x) The governing body shall ensure that diaper changing procedures meeting the requirements of this rule are posted in the diaper changing area.

(6) Handwashing Sinks.

(a) Handwashing sinks shall be placed in or immediately adjacent to toilet facilities.

(b) Handwashing sinks shall be located in or conveniently adjacent to classrooms where normal activities require the students to wash their hands either before or after performing the classroom activities. All elementary classrooms, life skills, art, chemistry, biology, auto shop, wood and metal shop, and drama must have handwashing sinks located in or conveniently adjacent to them. Water provided at these locations must be

tempered to or adjustable to a minimum of 100 degrees Fahrenheit (37.8 degrees Celsius) and not exceed 110 degrees Fahrenheit (43.3 degrees Celsius).

(c) Handwashing sinks must be provided at locations where persons are required to handle any liquids that may burn, irritate, or are otherwise harmful to the skin.

(d) Handwashing sinks shall be at a height appropriate to the children that use them.

(e) Handwashing sinks with hot and cold water shall be provided with faucets that utilize a mixing valve or a combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for an average of at least 15 seconds without the need to reactivate the faucet.

(f) Hand cleaning soap or detergent must be conveniently provided near each handwashing sink.

(g) Disposable sanitary towels shall be provided in a protective dispenser that dispenses one towel at a time or a forced-air mechanical hand-drying device providing heated air conveniently located near each handwashing sink. If cloth towels are used for hand drying, a towel or segment of a roll cloth towel that has not been used by another person since it was laundered shall be available for each person.

(h) Handwashing sinks and all related fixtures shall be kept clean and maintained in good repair.

(7) Shower Facilities.

(a) Shower Construction.

(i) Showers for classes in physical education shall be provided if students are required to change clothes. Each shower must be provided with hot and cold water utilizing a mixing valve or combination faucet. Nothing in this section shall prohibit the use of water temperature controls to ensure the safety of the student. A non-skid surface must be installed on shower floors and adjacent floor areas. Shower room walls and ceilings shall be constructed with light colored, smooth, nonabsorbent, and easily cleanable materials.

(ii) At least one shower head shall be provided for each 15 students utilizing any adjacent dressing area at any one time. A supply of liquid soap for showering must be provided.

(iii) At least two privacy showers must be provided for schools constructed after January 1, 2012.

(iv) A dressing room area with non-skid floors and floor drains shall be provided adjacent to shower facilities. Showers shall be constructed to prevent water flow into the drying and dressing room area. Hard surfaced or materials that cannot absorb water must be used for floors, benches, and other furniture in dressing rooms.

(v) The shower area dressing room shall be mechanically ventilated to the outside of the building and a system to resupply the air that is exhausted must be installed.

(vi) Toilet rooms and towel racks shall be located convenient to shower and dressing rooms.

(b) Shower Room Cleaning and Maintenance.

Showers, dressing rooms, and adjacent areas shall be kept clean and free of clutter. Shower room walls and ceilings shall be kept clean and maintained in good repair. Shower floors shall be cleaned and disinfected daily after school activity use.

(c) Shower Supplies.

If students are provided with towels, the towels shall be laundered at least weekly and shall not be shared with another student.

(8) Drinking Fountains.

(a) Drinking fountains shall provide a water stream of at least a 2 inch arch into the basin.

(b) Fountains shall be kept clean and in good repair.

(c) Drinking fountains are prohibited in areas where contamination from human wastes or toxic or hazardous materials is likely to occur, including toilet rooms and

laboratories.

(d) Drinking fountains shall be installed so the height of the drinking fountain is at the drinking level convenient to students utilizing the drinking fountain.

(e) Drinking fountains shall be conveniently located and easily accessible for all recreational facilities and areas utilized for school functions.

(f) Single service and multi use cups provided by the school must meet the requirements of R392-100.

(9) Swimming Pools.

Swimming pools at school facilities must be constructed, operated, and maintained in accordance with R392-302.

(10) Waste Collection, Storage and Disposal.

(a) Waste containers shall be provided in each classroom.

(b) For shops, chemistry labs, and similar areas, separate waste containers shall also be provided for each type of waste material not allowed to be disposed with regular municipal waste.

(c) Solid wastes shall be kept in durable, easily cleanable, insect-resistant and rodent-resistant containers that do not leak and do not absorb liquids.

(d) A sufficient number and size of containers must be provided to hold all the garbage, refuse, and other waste accumulated between the times when the containers are emptied.

(e) The governing body shall direct school personnel to clean and repair or replace all waste containers at a frequency that will prevent odors and prevent insect and rodent attraction. Hot water at a minimum of 110 degrees Fahrenheit (43.3 degrees Celsius) and detergent or steam must be provided for washing waste containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage and shall not be allowed to enter any storm drain.

(f) Storage.

(i) Waste materials stored on the premises must be located to minimize access to insects, rodents, and other animals and not cause a nuisance. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material that contains no garbage or food wastes need not be stored in covered containers, if such material is protected in an enclosure or baled.

(ii) Tight-fitting lids, doors, or covers shall be provided on waste containers, refuse bins, compactors, and compactor systems. The lids, doors, or covers shall be kept closed except when emptying or filling. Containers, refuse bins, compactors, and compactor systems used by the school shall be easily cleanable and maintained in good repair. Containers designed with drains shall have drain plugs in place except during cleaning.

(iii) If waste storage rooms are used, the rooms shall have walls, floors, and ceilings constructed with easily cleanable, nonabsorbent, washable materials that are clean and in good repair. The doors of storage rooms shall be fitted to reduce the entrance of rodents and insects.

(iv) Outside storage areas or enclosures shall be constructed of easily cleanable materials and shall be kept clean and maintained in good repair. Outside waste containers, refuse bins and compactor systems shall be stored on or above a smooth surface of cleanable material, such as concrete or asphalt, that is kept clean and maintained in good repair.

(g) Disposal.

(i) Waste shall be disposed of often enough to prevent the development of odor and minimize the harborage of insects or rodents.

(ii) The disposal of all waste shall comply with all Utah Division of Solid and Hazardous Waste rules and local health department regulations.

(11) Hazardous Wastes.

All hazardous and regulated waste disposal shall comply with the Utah waste management rules and applicable local regulations.

(12) Pest Management.

(a) The governing body shall minimize in school buildings or on school grounds the presence of pests that are vectors for disease, carry allergens that are likely to affect individuals with allergies or respiratory problems, or may sting or bite causing mild to serious reactions in some individuals.

(b) The governing body shall adopt integrated pest management (IPM) practices and principles to prevent unacceptable levels of pest activity with the least possible hazard to people, property, and the environment.

(c) The governing body shall have a written integrated pest management plan written by the governing body or provided by the contracted pest management contractor whether IPM is implemented as an internal process or contracted to a pest management professional. The plan shall include sections that cover the following topics: an IPM policy statement; IPM implementation and education; pest identification, monitoring procedures, reporting and control practices; approved pesticides; procedures for pesticide use; a policy for the notification of students, parents, and staff; and applicator requirements. Guidance for an IPM plan can be found in publications of the IPM Institute of North America. The Department or the Local Health Officer may require changes in a school's IPM plan if the plan neglects or causes a threat to the health or safety of the occupants of a school.

(d) The governing body shall use non-chemical management methods whenever possible to provide the desired control. The governing body shall use a full range of control alternatives including: identification and removal or repair of conditions that are conducive to pests; structural repair and sealing; improved sanitation; removal of clutter or harborage; elimination of food sources; exclusionary measures to protect doors, windows and any other opening to the outside against the entrance of insects, rodents, and other animals. A no-action alternative shall also be considered in cases where the pest has no public health or property damage significance.

(e) If the governing body chooses to not use a contracted pest control contractor, school personnel who apply pesticides shall follow the Utah Dept. of Agriculture pesticide regulation R68-7. The applicator shall apply all products according to the pesticide label directions.

**R392-200-8. Construction and Maintenance of Physical Facilities.**

(1) Floors, Walls, and Ceilings.

All school building floors, walls, and ceilings shall be constructed with materials that are durable and easily cleanable. Floors, walls, and ceilings shall be clean and in good condition.

(2) Lighting.

(a) Lighting in all parts of the school building shall have the capability to provide at least the minimum required illumination levels listed in Table I when the building is in use. Permanently fixed artificial light sources must be provided.

TABLE 1

MINIMUM REQUIRED ILLUMINATION LEVELS

Task or Area	Footcandle Level/Lux
General instructional areas: Study halls, art rooms, lecture rooms, libraries, and other areas	50/538
Special instructional areas: Drafting rooms, laboratories, shops, and other rooms where some fine detail work	

is done	100/1076
Special instruction areas: Sewing and other rooms where fine detail work is done	100/1076
Gymnasiums: Auxiliary spaces, shower rooms and locker rooms	30/323
Gymnasiums: Main recreation spaces	50/538
Auditoriums, faculty and staff lunchrooms, assembly and multi-purpose rooms, and similar areas not used for classrooms	30/323
Corridors, stairs, hallways, passageways, storerooms, and similar areas	10/108
Toilet rooms	10/108
Offices	50/538

(b) All light fixtures located in shops, life skills, cafeterias, kitchens, food preparation areas, toilet rooms, shower areas, locker rooms, and gymnasiums shall have protective shields to contain broken glass if the bulb or tube is broken or shattered.

(c) School personnel or contracted persons shall clean and repair light fixtures and replace burned out bulbs or lamps as often as necessary in order to maintain the illumination levels required in this section.

(3) Ventilation.

(a) Ventilation throughout the school must be in accordance with the requirements of the mechanical code adopted by the Utah Legislature under Section 15A-2-103.

(b) Air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials. Vehicles must be prohibited from parking in areas adjacent to and close enough to building air intakes to create a vehicle exhaust hazard and nuisance inside the structure.

(4) Heating and Cooling.

(a) Heating facilities must be installed, vented and maintained in a safe working condition. Portable combustion type space heaters are prohibited.

(b) During cold weather, the governing body shall maintain the occupied areas of the school building at a temperature between 68 and 74 degrees Fahrenheit (20 and 26.3 degrees Celsius). Occupied areas of school buildings used for school activities which because of the nature of the activities require a temperature different from that of a classroom such as ice skating, aerobics, and swimming shall be maintained at the appropriate temperature for the activity. Temperatures shall also be maintained at an appropriate range for any students who qualify under the Individuals with Disabilities Education Act.

(c) During periods of hot weather when the outside temperature is 90 F or higher when school is in session, the governing body shall employ either an automatic temperature monitoring system or a written plan executed by assigned staff to monitor the temperature of each occupied classroom, occupied auditorium, and occupied gymnasium in a school building. The equipment used for temperature monitoring must have a full range accuracy of plus or minus two degrees Fahrenheit (1.1 degrees Celsius). The frequency of temperature measurement may vary in the programming of the automatic system or in the staff executed temperature monitoring plan based on outside temperatures but must be often enough to assure that occupied areas don't exceed temperature maximums.

(i) If the temperature readings taken in the classrooms, auditorium, or gymnasium are above 90 degrees Fahrenheit (36.3 degrees Celsius), the time shall be recorded and the

temperature continuously monitored by the automatic system or the person measuring the temperature. If the temperature remains above 90 degrees Fahrenheit (36.3 degrees Celsius) for 90 consecutive minutes, the automatic system or person performing the monitoring shall alert the person in charge of the school and the person in charge shall order the removal of all students from the affected areas of the school. The governing body shall not allow students to return to affected areas until the temperature is at or below 79 degrees Fahrenheit (26.1 degrees Celsius). If there are insufficient areas of the school to accommodate students at temperatures below 90 degrees Fahrenheit (36.3 degrees Celsius), then school officials shall provide an alternative environment that meets the above temperature requirement such as providing alternative instructional activities or employing portable cooling equipment. School officials shall notify parents of children with special health care needs.

(ii) The governing body shall have a written plan that identifies any groups of students that are unusually vulnerable to elevated temperatures and describes actions that will be taken when the recorded temperature in occupied classrooms, auditoriums or gymnasiums reaches 80 degrees Fahrenheit (26.7 degrees Celsius) and above. The written plan may be part of the school's emergency response plan.

(5) Maintenance of Heating, Ventilation and Air Conditioning Equipment.

(a) The governing body shall have qualified in-house or contracted service technicians conduct a heating, ventilating, and air-conditioning system inspection and necessary maintenance activities according to manufacturer recommendations at proper time intervals.

(b) If the school has a boiler or other mechanical units required to be inspected and certified for use, the governing body shall make sure that the most recent boiler inspection certificate is posted in the boiler room. The certificate must be issued by the Utah Division of Boiler and Elevator Safety or an inspector who has been approved and deputized by the Division of Boiler and Elevator Safety.

(6) Cleaning Physical Facilities.

(a) The governing body shall make sure that floors, walls, ceilings, and attached equipment are kept clean.

(b) In new or extensively remodeled schools, at least one utility sink or curbed floor sink shall be located on each floor. The governing body shall make sure personnel who perform cleaning tasks use this area for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of handwashing sinks for this purpose is prohibited.

(7) Custodian Closets.

(a) Custodial closets, equipment and supply storage rooms shall be kept clean and orderly and shall be kept locked if toxic supplies are present.

(b) Storerooms or cabinets shall be provided for cleaning materials, pesticides, paints, flammables, or other hazardous or toxic chemicals, and for tools and maintenance equipment. Materials incompatible due to potential contamination or potential chemical reactions shall be separated from one another. These areas shall be kept locked and not used for any other purpose that is incompatible with the materials stored and shall comply with the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.

(c) Oiled mops, dust cloths, rags, and other materials subject to spontaneous combustion shall be properly stored in approved fire resistant containers as required by the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.

### R392-200-9. Health and Safety.

(1) Health.

(a) A centrally located room or area for emergency use in providing care for persons who are ill, injured or suspected of having any contagious disease must be located in each school. In schools built after 1987, a clinic room must be provided and shall have a handwashing sink with hot and cold running water, soap, individual towels, first aid supplies, and lockable cabinet space for storage of first-aid supplies. Clinic rooms or areas used for emergency treatment and first-aid shall be kept clean and maintained in good repair. The governing body shall have a written plan or policy available for review upon request by the local health department that states how a nurse or doctor can be contacted at any time the school is in session. Prior agreement shall have been made with the doctor or nurse to ensure availability. In addition, at least two designated individuals shall be on site that have a current Red Cross basic first aid and CPR certificate or equivalent training approved by the governing body.

(b) The governing body of each school shall ensure that:

(i) each emergency care room or clinic area is provided with a cot or bed that has a cleanable surface or cover;

(ii) disposable bedding is changed after each person's use; and

(iii) multi-use sheets or covers are laundered after each person's use.

(c) All prescription or over the counter medication administered by school personnel, and records required by 53A-11-601 shall be stored in a secure refrigerator, drawer, or cabinet accessible only by those authorized to administer the medication.

(d) If a school has specified sleeping areas, the school shall provide these areas with cots, mats, or floor pads. Reusable covers supplied by the school must be easily cleanable and maintained in good repair. When in use, the covers must be cleaned between each user and at least weekly. Disposable covers must be discarded after each use.

(e) In high risk injury areas including shops, laboratories, places where theater props and scenery are built, life skills, playgrounds, and gymnasiums, the instructor must possess at a minimum, a current Red Cross basic first-aid certificate, or equivalent as determined by the governing body, and must be on site at all times when classes are being held. A readily accessible first-aid kit that is appropriate for the risks in the area must be available at the school. School buses shall also carry a first aid kit and bus drivers shall have a current Red Cross basic first aid certificate, or equivalent training as determined by the governing body.

(2) Safety.

(a) Instructional, athletic, or recreational equipment shall be kept clean, safe, and in good repair.

(b) Playground equipment shall be installed and maintained in accordance with the Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Publication Number 325, April 2008 Revision.

(c) Handrails on stairways, ramps, and outside steps shall be in compliance with the building code adopted by the Utah Legislature under Section 15A-2-103, and shall be properly maintained.

(d) A master shut-off valve to flammable gas supply lines in science laboratories, life skills areas, shops, and other rooms that utilize gas supply lines, shall be readily accessible to instructors for emergency shut off.

(e) A master electric shut off switch shall be readily accessible to instructors in life skills areas, shop classrooms, applicable art rooms, and labs where electrically operated instructional equipment are present that may be a safety hazard to the operator.

(f) All instructional shop classrooms, art rooms, craft rooms, and laboratories shall be kept clean and maintained in good condition. Cleaning and sweeping of these rooms shall be

done in a way to minimize dust.

(g) The governing body of the school shall ensure that specific safety directions accompany substances that are deemed potentially harmful or hazardous to the health and safety of individuals who use them. The directions shall include the proper use, storage, handling and disposal of the substance and the potential risks or hazards associated with the substance. Designated personnel shall ensure that Material Safety Data Sheets (MSDS) for all chemicals used at the school are available at all times for review by staff or students that use the product and for review by the local health or safety inspectors during inspections.

(h) In high risk injury areas, the class instructor shall ensure that provisions, including the development and posting of operating instructions, regulations, or procedures are posted and reviewed by students in these areas. Students must demonstrate to the instructor knowledge of and safety practices for each piece of equipment prior to any use by the student. The instructor shall ensure that all safety guards are in place and operational on shop equipment.

(i) The class instructor shall train and direct students operating power equipment to not wear loose clothing including ties, lapels, cuffs, torn clothing or similar garments that can become entangled in power equipment.

(ii) The class instructor shall train and direct students that wrist watches, rings, or other jewelry are not to be worn in any class where they constitute a safety hazard.

(iii) The class instructor shall train and direct students to restrain their hair if there is a risk of hair entanglement in moving parts of power equipment.

(iv) The governing body shall sufficiently control exposure to noise, toxic dusts, gases, mists, fumes, or vapors so that a health hazard does not occur.

(v) The class instructor shall ensure that appropriate safety equipment is available and train and direct students to wear it while engaged in activities where there is exposure to hazardous conditions.

(vi) Safety zones shall be outlined on the floor around areas of equipment where there is danger of possible injury to students.

(vii) Emergency shower or eyewash stations shall be readily available in areas where there is a potential for accidental exposure to corrosive, poisonous, infectious, or irritating materials. The area around this safety equipment shall be kept free of clutter and encumbrances to its immediate use. The design and installation of emergency shower and eyewash stations shall meet the plumbing code adopted by the Utah legislature under Section 15A-2-103.

(i) Poisonous, dangerous or otherwise harmful plants or animals shall not be kept on the school premises unless it is in conjunction with a course curriculum. Poisonous or toxic plants must be labeled with their scientific name, and a warning sign posted describing the health risks and first aid instructions for skin contact or ingestion. A warning sign shall be posted on the confining area of animals which are likely to carry disease; the sign shall state the disease causing organisms the animal is likely to be infected with and precautions to people should take to avoid disease.

(j) Flammable liquids, must be stored in a locked fire resistant area with access only by school assigned personnel. The storage area shall comply with the Utah state fire code and rules.

(k) Oxygen, acetylene, and other high pressure cylinders shall be secured, including empty cylinders, from tipping over. Safety valve hoods shall be kept in place when the tanks are not in use. Unless staged on a welding cart for use, empty or full oxygen and acetylene gas cylinders must be segregated by at least 20 feet or by a fire wall with a 30 minute rating at least five feet high.

(l) No flammable, explosive, toxic, or hazardous liquids, gases, or chemicals shall be placed, stored, or used in any building or part of a building used for school purposes, except in approved quantities as necessary for use in laboratories, instructional shop classes, and utility rooms. Hazardous liquids or gases shall be stored in tightly sealed containers and hazardous liquids, gases, and chemicals shall be stored in locked safety cabinets or locked storage rooms when not in use.

(m) Electrical wiring and components shall be maintained in good repair. Electrical panels must maintain a three foot clearance free of obstructions.

#### **R392-200-10. Access.**

The local health department representative, after showing proper identification, shall be granted access to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this rule.

#### **KEY: public health, schools**

**February 19, 2014**

**Notice of Continuation November 7, 2016**

**26-15-2**

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-300. Recreation Camp Sanitation.**

**R392-300-1. Definitions.**

Day-Use Area means any parcel or tract of land designated as a recreation park, picnic grounds, or recreational area which may be located within the confines of an organized recreation camp or it may be an area developed by participating person or groups to satisfy their recreational demands. It shall include but is not limited to: Centers for public gathering for the purpose of witnessing or participating in special outdoor events such as automobile racing, off highway vehicle activity, competitive sports, hunting and fishing activities, etc. Occupation of the area is limited specifically to day use and does not include overnight accommodations.

Director means the Executive Director of the Utah Department of Health.

Modern Camp means a campground of two or more campsites accessible by any type of vehicular traffic. The camp is used wholly or in part for recreation, training or instruction, social, religious activity or physical education or whose primary purpose is to provide an outdoor group living experience. The site is equipped with permanent buildings for the purpose of sleeping, a culinary water supply under pressure, food service facilities, and may be operated on a seasonal or short term basis. These types of camps shall include but are not limited to privately owned campgrounds such as youth camps, church camps, boy or girl scout camps, mixed age group, family group camps, etc.

Semi-developed - A campground of two or more campsites accessible by any type of vehicular traffic. Facilities are provided for both protection of site and comfort of users. Roads, trails and campsites are defined and basic facilities (water flush toilets and/or vault toilets, tables, fireplaces or tent pads) are provided. The camps include but are not limited to National Forest campgrounds, Bureau of Reclamation campgrounds, Utah State Park campgrounds, and youth camps. Campground operators who provide camping for organized groups for a period of seven (7) or more consecutive days must comply with the requirements in Table 1.

Semi-primitive - A campground usually accessible by walk-in, equestrian, or motorized trail vehicles. Rudimentary facilities (vault toilets or earthen pit privies\* and/or fireplaces) are provided. When pit privies are anticipated at a camp, approval for use must be obtained from the Director of the Utah Department of Health or the local health department having jurisdiction. Such facilities or improvements are designed for protection of the site and not for the comfort of the campers in the area.

Service Building - A building housing toilet, lavatories, bathing facilities, and other such facilities as may be required for use by these regulations.

Wastewater means discharges from all plumbing facilities such as rest rooms, kitchen, and laundry fixtures either separately or in combination.

**R392-300-2. General.**

2.1 It shall be the duty of each person operating a camp in the State of Utah to carry out the provisions of these regulations. Such person should also have the duty of controlling the conduct of camp occupants to this end, and should make at least one daily inspection of the entire camp for these purposes. All camp toilet and washroom facilities shall be inspected as frequently as necessary by the camp operator, to assure that it is operating in a sanitary manner.

2.2 Severability - If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provision to other person or circumstances, and the remainder of this code, shall not be

affected thereby.

2.3 All applicable building, zoning, electrical, health, fire codes and all local ordinances shall be complied with.

2.4 Campsites, including day-use areas, shall be constructed to provide adequate surface drainage, and shall be isolated from any existing or potential health hazard or nuisance.

**R392-300-3. Water Supply.**

3.1 Potable water supply systems for use by camp occupants shall meet the requirements of the State of Utah rules relating to public drinking water supplies.

\*Design and construction of all earthen privies must comply with standards set forth by the Utah Department of Environmental Quality.

3.2 In addition to the requirements of the rules and regulations relating to public drinking water supplies, the design of water system facilities shall be based on these suppliers engineer's estimate of water demands, but shall in no case be less than the following:

The distribution system serving modern camps with full facilities or semi-developed camps and day-use areas shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. Where appropriate, the peak hourly flow will be calculated on the number of fixture units as presented in the Utah Plumbing Code.

Other exceptions to the above requirements may be permitted on a case-by-case basis, as permitted by the State of Utah public drinking water rules.

3.2.1 The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on water requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

3.3 Construction of a public drinking water supply system intended to serve occupants of any recreation camp shall not commence until plans prepared by a licensed professional registered engineer (in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act) have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction, the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or local health department having jurisdiction.

3.3.1 All systems must be monitored in accordance with the State of Utah public drinking water rules, and in cooperation with the local health department having jurisdiction.

3.4 Any culinary system or any portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample, must be obtained before the system is placed into service.

3.4.1 Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the Director of the local health department having jurisdiction.

**R392-300-4. Wastewater.**

4.1 All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the recreational camp property line.

4.2 Where connection to a public sewer is not available,

wastewater shall be discharged into a wastewater disposal system meeting requirements of the State of Utah Code of Waste Disposal Regulations except as provided in 4.4. Unless water usage rates are available, design shall be based on not less than 30 gallons per day per person for modern camps. Design shall be based on 5 gallons per day per person for semi-developed camps and day-use areas. If these camps have water flush systems, then the design must be based on a minimum of 30 gallons per day per person.

4.3 All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Health, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

4.4 In camps providing other than water flush type toilets, waste disposal facilities shall be approved by the Director or local health authorities having jurisdiction.

**R392-300-5. Plumbing.**

5.1 The minimum plumbing fixtures to be provided are as follows:

TABLE I  
Required Plumbing Fixtures For Modern Camps

Plumbing Fixtures	Ratio of Plumbing Fixtures For Number of Camp Occupants(a)		
	Males	Females	Both Sexes
Water Closets	1:40	1:25	--
Urinals	1:50	--	--
Lavatories	1:35	1:35	
Showers(b)	1:35	1:35	
Drinking Fountains(c)	--	--	1:300
Service Sink or Hose Bibb	--	--	1 per service building

- (a) Or fraction thereof
- (b) Shower facilities should be provided with hot water
- (c) The use of common drinking cups is prohibited

TABLE II  
Required Plumbing Fixtures For Semi-Developed and Semi-Primitive Camps(a)

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Camp Occupants		
	Males	Females	Both Sexes
Water Closets	1:50	1:25	
Urinals	1:50	--	
Lavatories			1:50
Drinking Fountains			1:300
Service Sink or Hose Bibb			1 per service building

(a) In semi-developed or semi-primitive camps which provide other than water flush-type toilets, Table II will not apply. See Section 4.4.

5.2 Service buildings shall be located not less than 15 feet and not more than 500 feet from any living and camping spaces served.

5.3 Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by a sound-resistant wall. Direct line of sight to each rest room shall be effectively obstructed.

5.4 Soap and toilet tissue in suitable dispensers and waste receptacles with lids should be provided in each service building. Where lavatories are not provided, other adequate

hand cleansing facilities should be provided.

5.5 Where lavatories are provided, clean individual towels or other adequate hand drying facilities should be provided.

5.6 All plumbing installed in any camp shall comply with provisions of the Utah Plumbing Code and applicable local plumbing codes.

**R392-300-6. Operation and Maintenance.**

6.1 When tents, permanent or semi-permanent buildings are provided, they shall be of sound construction, shall assure adequate protection against the weather, and shall include essential facilities to permit maintenance in a clean and operable condition, and shall provide adequate storage for personal belongings.

6.2 In any permanent or semi-permanent building, the total window area in any room should be equal to at least 10 percent and in no case less than 5 percent of the floor area. For ventilation, windows shall be openable or mechanical ventilation must be provided.

6.3 Each structure made available for occupancy shall comply with the requirements of the Uniform Building Code, except for tents.

6.4 In dormitory type facilities, beds shall be separated by a horizontal distance of at least 5 feet, reducible to 3 feet if beds are alternated head to foot, except in the case of double deck bunks, which shall have a minimum horizontal separation of 6 feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the Director or director of the local health department having jurisdiction.

6.5 Each bed, bunk, cot or sleeping facility made available for use by occupants shall be maintained in a sanitary condition. Mattresses, mattress covers, quilts, blankets, pillows, pillow slips, sheets, comforters and other bedding shall be made available to each occupant not furnishing his own. Bedding shall be kept clean and in good repair. Pillows shall have pillow slips and sheets shall be large enough to completely cover mattresses. Bedding shall be changed daily or in between occupant use.

6.6 All buildings, rooms, and equipment, including furnishings and equipment in camping areas, and the grounds surrounding them shall be maintained in a clean and operable condition.

6.7 Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

6.8 Where necessary, all means shall be employed to eliminate or control infestations of insects and rodents within all parts of any camp. This shall include approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.

6.9 Each organized recreation camp shall be equipped with at least a standard 24-unit first aid kit which shall be kept filled and ready for use. Such kit(s) will be readily accessible and be conveniently located in the program, food service or office areas. Each recreation camp staff should have an individual who is adequately trained to render first aid. This individual should possess at least a certificate of completion of the Basic First Aid Course as presented by the American National Red Cross or its equivalent.

**R392-300-7. Food Service.**

7.1 When food service is provided for camp occupants, food service employees, food, ice, vending machines, food storage, preparation and serving facilities shall comply with R392-100 or applicable local food service regulations.

7.2 Local regulations may require food service facilities plan approval prior to the initiation of construction.

**R392-300-8. Solid Wastes.**

8.1 Solid wastes originating in any camp or picnic area shall be stored in a sanitary manner in approved, watertight containers with lids, or the equivalent, approved by the local health department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the state or local health department having jurisdiction.

**R392-300-9. Swimming Pool.**

9.1 Any swimming pool, wading or therapy pool made available to camp occupants shall comply with R392-302 and applicable local regulations.

**KEY: public health, recreation areas**

**1987**

**26-15-2**

**Notice of Continuation November 8, 2016**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-301. Recreational Vehicle Park Sanitation.****R392-301-1. Definitions.**

Recreational Vehicle - means a vehicular unit, other than a mobile home, designed as a temporary dwelling for travel, recreational and vacation use, which is either self-propelled or is mounted on or pulled by another vehicle, including: travel trailer, camp trailer, folding tent trailer, truck camper, or motor home.

Dependent Recreational Vehicle - means a recreational vehicle that is dependent upon a service building for toilet facilities, hand washing facilities, shower or bathing facilities and is not designed for the connection to water or sewer utilities.

Director - means the Executive Director of the Utah Department of Health.

Independent Recreational Vehicle - means a recreational vehicle equipped with a toilet, bath or shower which, to be functional, requires connection to outside water and sewer utilities.

Recreational Vehicle Park - means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for two or more recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the general public or restricted to the organizational or institutional members and their guests only.

Sanitary Dump Station - means a properly designed and constructed facility intended to receive the discharge of wastewater from any holding tank or similar device installed in any recreational vehicle, and having a means of discharging the contents, in an acceptable manner, to an approved wastewater disposal system.

Self-Contained Recreational Vehicle - means a recreational vehicle which can function independent of connections to outside sewer and water utilities. It must contain at least a water-flush toilet and a sink which are connected to water storage and wastewater holding tanks within the recreational vehicle. Any additional plumbing fixtures included in the vehicle shall also be connected to the wastewater holding tank.

Service Building - means a building or room housing toilet, lavatory and bathing facilities, and such other facilities as may be required for the use of recreational vehicle park occupants.

Wastewater - means discharges from all plumbing facilities, such as rest rooms, kitchen and laundry fixtures, either separately or in combination.

**R392-301-2. General.**

2.1 It shall be the duty of each person operating a recreational vehicle park in the state of Utah to carry out the provisions of this rule. Each person operating a recreational vehicle park shall also have the duty of controlling the conduct of park occupants to this end, and shall make at least one daily inspection of the entire park for these purposes. Central toilet and washroom facilities shall be inspected as necessary by the park operator.

2.2 Severability - If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.

2.3 Park sites shall be designed and constructed to provide adequate surface drainage, and shall be isolated from any existing or potential health hazard or nuisance.

2.4 All applicable local and state building, zoning, electrical, health, fire codes and all local ordinances shall be complied with.

**R392-301-3. Water Supplies.**

3.1 Potable water supply systems for use by recreational vehicle park occupants shall meet the requirements of the state of Utah rules relating to public drinking water supplies.

3.2 In addition to the requirements of the rules relating to public drinking water supplies, the design of water system facilities shall be based on the suppliers engineer's estimate of water demands, but shall in no case be less than the following:

3.2.1 For independent and self-contained recreational vehicles.

3.2.1.1 Source Capacity - 100 gallons per day per vehicle space.

3.2.1.2 Storage Volume - 50 gallons per vehicle space.

3.2.1.3 Distribution system capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. The peak hourly flow shall be based on Figure 3.1.

Other exceptions to the above requirements may be made as permitted by the state of Utah public drinking water rules.

3.2.1.4 Any space set aside for the exclusive use of self-contained recreational vehicles shall have access to a water supply acceptable to the Director, or director of the local health department.

3.2.2 For the service building serving dependent recreational vehicles.

3.2.2.1 Source Capacity - 100 gallons per day per vehicle space.

3.2.2.2 Storage Volume - 50 gallons per vehicle space.

3.2.2.3 Distribution system capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. The peak hourly flow shall be calculated for the number of fixture units as presented in the Utah Plumbing Code.

Other exceptions to the above requirements may be made as permitted in the state of Utah public drinking water rules.

3.3 The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g., area of land to be irrigated) must be provided for Department of Health review.

3.4 Construction of a public drinking water supply system intended to serve occupants of any recreational vehicle park shall not commence until plans prepared by a licensed professional registered engineer, in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act, have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction, the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or the local health department having jurisdiction.

3.4.1 All systems must be monitored in accordance with the state of Utah public drinking water rules and in cooperation with the local health department having jurisdiction.

3.5 Any culinary system or portion thereof that becomes drained seasonally must be cleaned, flushed and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing no more than one coliform bacteria per 100 ml. sample, must be obtained before being placed into service.

3.5.1 Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated

frequency as determined by the Director or director of the local health department having jurisdiction.

3.6 In any recreational vehicle park the following requirements shall apply:

3.6.1 Water service shall be made available to each designated recreational vehicle space in accordance with the requirements of the Utah Department of Health. This provision may be modified when spaces are provided to accommodate dependent or self-contained units only, in which case a conveniently located on-threaded hydrant or other acceptable water supply fixture shall be provided and shall be protected against the hazards of backflow and hose contamination.

3.6.2 Water connections serving independent recreational vehicles shall be at least 4 inches above the surrounding surface elevation and shall be separated at least 5 feet horizontally from the sewer riser for such vehicles. Lines serving water and sewer connections shall be separated at least 10 feet horizontally except as provided below:

3.6.2.1 The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the wastewater drainage line at its highest point, and in no instance less than 24 inches horizontal separation.

3.6.2.2 The water service pipe shall be placed on an undisturbed shelf excavated at one side of the common trench.

3.6.2.3 The number of joints in the water and sewer pipe shall be kept to a minimum. The materials and joints of both water and sewer pipe shall be of a strength and durability and installed in accordance with the provisions of the Utah Plumbing Code.

3.7 In any recreational vehicle park or portion thereof where it is not feasible to pipe water into the area, an alternate supply may be permitted upon approval of the Director or local health authorities having jurisdiction.

#### **R392-301-4. Wastewater.**

4.1 All wastewater shall be discharged to a public sewer system where accessible within 30 feet of the recreational vehicle park property line.

4.2 Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the state rules for waste disposal. Unless water usage rates are available, design shall be based on not less than 125 gallons per day per recreational vehicle space.

4.3 All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the Department of Environmental Quality, such plans shall be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

4.3.1 Sewer service shall be made available to each designated space designed and intended to accommodate independent recreational vehicles, in accordance with the requirements of the rules for waste disposal.

4.3.2 Sewer risers serving independent recreational vehicles shall be provided with tight covers when not in use.

4.3.3 A trap is prohibited between the sewer riser and sewer lateral.

4.3.4 The connection and connecting line between the recreational vehicle drain outlet and the sewer riser shall be watertight and self-draining.

4.3.5 The rim of the sewer riser shall extend not more than 4 inches above adjacent ground surface elevations. Surface drainage shall be directed away from the sewer riser. (See also Subsection 3.6.2)

4.3.6 Camping vehicles, not equipped with plumbing

fixtures shall not be located in a camping vehicle park unless effective means are provided to collect and contain dish washing, bathing or other liquid waste material and to properly dispose of these wastes by means approved for the purpose to prevent discharge upon the ground.

4.4 A sanitary station of approved design shall be provided for the disposal of wastewater originating in any recreational vehicle when not covered under Subsection 4.3.1. The design shall be based on not less than 50 gallons per day per "self-contained" trailer space.

#### **R392-301-5. Service Building.**

5.1 In any recreational vehicle park which accepts patrons with dependent vehicles or tents, adequate service building facilities shall be provided and shall meet the following requirements:

5.1.1 They shall be located not less than 15 feet and not more than 500 feet from any living spaces served.

5.1.2 They shall be of permanent construction and be provided with adequate light, heat and ventilation.

5.1.3 They shall be properly maintained and operated with interiors of smooth, moisture resistant materials, to permit frequent washing and cleaning.

5.1.4 They shall be adequately equipped with lavatories with water under adequate pressure, and with flush type toilet fixtures to serve all recreational vehicle parking spaces not otherwise provided with such facilities.

#### **R392-301-6. Plumbing.**

6.1 The minimum plumbing fixtures which shall be available to all park occupants are as follows, except as indicated in Subsection 6.8.

6.2 Approved sanitary drinking fountains shall be provided for the use of occupants at a ratio of one per 300 occupants.

6.3 Whenever toilet facilities for male and females are located in the same building, and adjacent to each other, they shall be separated by a sound-resistant wall. Direct line of sight to each rest room shall be effectively obstructed.

6.4 Adequate, clean individual towels shall be supplied for each guest not furnishing his own. Other approved hand-drying facilities may be substituted for individual towels.

6.5 Soap and toilet tissue in suitable dispensers and waste receptacles with lids shall be provided in each rest room.

6.6 Essential laundering facilities should be available to park occupants. If included as part of the park facilities, there shall be provided for each 12 parking spaces, or fraction thereof, at least one laundry tray, washtub or washing machine, served by proper wastewater disposal facilities.

6.7 Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure.

6.8 Where water cannot be made available, exceptions to the above requirement may be granted upon approval of the Director or local health authorities having jurisdiction.

6.9 All plumbing installed in any recreational vehicle park shall comply with provisions of the Utah Plumbing Code and local plumbing codes.

#### **R392-301-7. Operation and Maintenance.**

7.1 All buildings, rooms, and equipment and the grounds surrounding them shall be maintained in a clean and operable condition.

7.2 Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

7.3 All necessary means shall be employed to eliminate or control any infestations of insects and rodents within all parts of any recreational vehicle park. This shall include proper

screening or other approved control of outside openings in structures intended for occupancy or for food storage.

**R392-301-8. Swimming Pools.**

8.1 Each swimming pool, wading or therapy pool made available to occupants shall comply with R392-302 and applicable local regulations.

**R392-301-9. Solid Wastes.**

9.1 Solid wastes, originating in any recreational vehicle park, shall be stored in a sanitary manner in approved, watertight containers with lids, or the equivalent, approved by the local health department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the state or local health department having jurisdiction.

**R392-301-10. Food Service.**

10.1 When food service is made available to park occupants, food service employees, food, ice, vending machines, food storage, preparation and serving facilities shall comply with the requirements of R392-100.

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Camp Occupants(1)	
	Males	Females
Water closets	1/50	1/25
Urinals	1/50	--
Lavatories	1/50	1/50
Shower(2)	1/35	1/35

(1)Or fraction thereof. The number of park occupants shall be calculated on the basis of 3.5 persons for each recreational vehicle space.

(2)Showers are optional, but if provided shall comply with the table. Water system requirements under Subsection 3.2 may be modified to compensate for the absence of showers upon approval of the Director.

Plumbing Fixtures	Ratio of Plumbing Fixtures For Labor Camp Occupants(1)	
	Males	Females
Water Closets	1/10	1/8
Urinals	1/25	--
Lavatories	1/12	1/12
Shower/Bath	1/8	1/8

(1)In camps which provide other than water flush-type toilets, urinals, lavatories and showers may be deleted.

**KEY: public health, recreation areas**

**1993**

**26-15-2**

**Notice of Continuation November 8, 2016**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-302. Design, Construction and Operation of Public Pools.****R392-302-1. Authority and Purpose of Rule.**

This rule is authorized under Sections 26-1-5, 26-1-30 and 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools.

**R392-302-2. Definitions.**

The following definitions apply in this rule.

(1) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(2) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.

(3) "Department" means the Utah Department of Health.

(4) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(5) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(6) "Float Tank" means a tank containing a skin-temperature solution of water and Epsom salts at a specific gravity high enough to allow the user to float supine while motionless and require a deliberate effort by the user to turn over and that is designed to provide for solitary use and sensory deprivation of the user.

(7) "Gravity Drain System" means a pool drain system wherein the drains are connected to a surge or collector tank and rather than drawing directly from the drain, the circulation pump draws from the surge or collector tank and the surface of the water contained in the tank is maintained at atmospheric pressure.

(8) "High Bather Load" means 90% or greater of the designed maximum bather load."

(9) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(10) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(11) "Interactive Water Feature" means a recirculating water feature designed, installed or used for recreational use, in which there is direct water contact from the feature with the public, and when not in operation, all water drains freely so there is no ponding.

(12) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(13) "Lifeguard" means an attendant who supervises the safety of bathers.

(14) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(15) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(16) "Pool" means a man-made basin, chamber, receptacle, tank, or tub, above ground or in-ground, which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(17) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(18) "Pool Shell" means the rigid encasing structure of a

pool that confines the pool water by resisting the hydrostatic pressure of the pool water, resisting the pressure of any exterior soil, and transferring the weight of the pool water (sometimes through other supporting structures) to the soil or the building that surrounds it.

(19) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(20) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool and may be above ground or in-ground.

(21) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(22) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(23) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(24) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(25) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(26) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(27) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(28) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(29) "Unblockable Drain" means a drain of any size or shape such that a representation of the torso of a 99 percentile adult male cannot sufficiently block it to the extent that it creates a body suction entrapment hazard.

(30) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(31) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

**R392-302-3. General Requirements.**

(1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

(2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.

(3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a

water slide splash pool, or children's water play activities.

- (4) This rule does not regulate float tanks.

#### **R392-302-4. Water Supply.**

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap.

#### **R392-302-5. Sewer System.**

(1) Each public pool must discharge waste water to a public sanitary sewer system if the sewer system is within 300 feet of the property line. Where no public sanitary sewer system is available within 300 feet of the property line, the local health department may approve connections made to a disposal system designed, constructed, and operated in accordance with the minimum requirements of the Department of Environmental Quality.

(2) Each public pool must connect to a sewer or wastewater disposal system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall connect to a sewer or wastewater disposal system through an air gap.

#### **R392-302-6. Construction Materials.**

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) All public pools shall be constructed with a pool shell that meets the requirements of this section R392-302-6. Vinyl liners that are not bonded to a pool shell are prohibited. A vinyl liner that is bonded to a pool shell shall have at least a 60 mil thickness. Sand, clay or earth walls or bottoms are prohibited.

(3) The pool shell of a public pool must withstand the stresses associated with the normal uses of the pool and regular maintenance. The pool shell shall by itself withstand, without any damage to the structure, the stresses of complete emptying of the pool without shoring or additional support.

(4) In addition to the requirements of R392-302-6(3), the interior surface of each pool must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints. The owner of a non-cementitious pool shall submit documentation with the plans required in R392-302-8(5) that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-1997;

(b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard;

(c) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(d) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of this

section R392-302-6.

- (5) The pool shell surface must be of a white or light pastel color.

#### **R392-302-7. Bather Load.**

(1) The bather load capacity of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a spa pool during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in an indoor swimming pool during maximum load.

(c) Twenty square feet, 1.86 square meters, of pool water surface area must be provided for each bather in an outdoor swimming pool during maximum load.

(d) Fifty square feet, 4.65 square meters, of pool water surface must be provided for each bather in a slide plunge pool during maximum load.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

#### **R392-302-8. Design Detail and Structural Stability.**

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) The pool operator or the designing architect or engineer shall submit plans for a new pool, pool renovation or pool remodeling project to the local health department for approval. This includes the replacement of equipment which is different from that originally approved by a health authority having jurisdiction. The local health department may require a pool renovation or pool remodeling project to meet the current requirements of R392-302.

#### **R392-302-9. Depths and Floor Slopes.**

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10 except for a pool used exclusively for scuba diving training.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3 except for a pool used exclusively for scuba diving training. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for

diving areas.

#### **R392-302-10. Walls.**

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters;

(b) have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less;

(c) be tangent to the wall;

(d) have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters; and

(e) have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited except when approved by the local health officer for a special purpose pool. Underwater ledges are prohibited in areas of a pool designed for diving. Where underwater ledges are allowed, a line must mark the extent of the ledge within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(4) Underwater seats and benches are allowed in pools so long as they conform to the following:

(a) Seats and benches shall be located completely inside of the perimeter shape of the pool;

(b) The horizontal surface shall be a maximum of 20 inches, 51 centimeter, below the water line;

(c) An unobstructed surface shall be provided that is a minimum of 10 inches, 25 centimeters, and a maximum of 20 inches front to back, and a minimum of 24 inches, 61 centimeters, wide;

(d) The pool wall under the seat or bench shall be flush with the leading edge of the seat or bench and meet the requirements of R392-302-10(1) and (2);

(e) Seats and benches may not replace the stairs or ladders required in R392-302-12, but are allowed in conjunction with pool stairs;

(f) Underwater seats may be located in the deep area of the pool where diving equipment (manufactured or constructed) is installed, provided they are located outside of the minimum water envelope for diving equipment; and

(g) A line must mark the extent of the seat or bench within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

#### **R392-302-11. Diving Areas.**

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1

and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches in height in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches in height with a stroke width of at least one-half inch.

#### **R392-302-12. Ladders, Recessed Steps, and Stairs.**

(1) Location.

(a) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(b) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(c) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(d) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(e) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(f) No pool shall be equipped with fewer than two means of entry or exit as outlined above.

(2) Handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(3) Steps.

(a) Steps must have at least one handrail. The handrail shall be mounted on the deck and extend to the bottom step either attached at or cantilever to the bottom step. Handrails may also be mounted in the pool bottom of a wading area at the top of submerged stairs that lead into a swimming pool; such handrails must also extend to the bottom step either attached at or cantilever to the bottom step.

(b) Steps must be constructed of corrosion-resistant

material, be easily cleanable, and be of a safe design.

(c) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(d) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(e) Steps must have a line at least 1 inch, 2.54 centimeters, in width and be of a contrasting dark color for a maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(4) Ladders.

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) Pool ladders must be designed to provide a handhold, must be rigidly installed, and must be maintained in safe working condition.

(c) Pool ladders shall have a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(d) Pool ladders shall have rungs with a maximum rise of 12 inches, 30.5 centimeters, and a minimum width of 14 inches, 35.6 centimeters.

(5) Recessed Steps.

(a) Recessed steps shall have a set of grab rails located at the top of the course with a rail on each side which extend over the coping or edge of the deck.

(b) Recessed steps shall be readily cleanable and provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

**R392-302-13. Decks and Walkways.**

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide must extend completely around the pool. The deck is measured from the pool side edge of the coping if the coping is flush with the pool deck, or from the back of the pool curb if the coping is elevated from the pool deck. Pool curbs shall be a minimum of 12 inches wide. The pool deck may include the pool coping if the coping is installed flush with the surrounding pool deck. If the coping is elevated from the pool deck, the maximum allowed elevation difference between the top of the coping surface and the surrounding deck is 19 inches, 38.1 centimeters. The minimum allowed elevation is 4 inches.

(2) Deck obstructions are allowed to accommodate diving boards, platforms, slides, steps, or ladders so long as at least 5 feet, 1.52 meters, of deck area is provided behind the deck end of any diving board, platform, slide, step, or ladder. Other types of deck obstructions may also be allowed by the local health officer so long as the obstructions meet all of the following criteria:

(a) the total pool perimeter that is obstructed equals less than 10 percent of the total pool perimeter; likewise, no more than 15 feet, 4.56 meters, of pool perimeter can be obstructed in any one location;

(b) multiple obstructions must be separated by at least five feet, 1.52 meters;

(c) an unobstructed area of deck not less than five feet, 1.52 meters, is provided around or through the obstruction and located not more than fifteen feet, 4.55 meters, from the edge of the pool.

(d) the design of the obstruction does not endanger the health or safety of persons using the pool; and

(e) written approval for the obstruction is obtained from the local health official prior to, or as part of, the plan review process.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53

millimeters, per linear foot.

(4) Decks and walkways must be constructed to drain away any standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(6) Deck drains may not return water to the pool or the circulation system.

(7) The operator shall maintain decks in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping. The operator shall wet vacuum any carpeting as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 4 inches, 10.2 centimeters, and a maximum height of 7 inches, 17.8 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

**R392-302-14. Fencing.**

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access when the access is open, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location. Horizontal members shall be equal to or more than 45 inches, 114.3 centimeters, apart.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be installed 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use. A lock that is separate from the latch and a self locking latch shall be installed with the lock's operable mechanism (key hole, electronic sensor, or combination dial) between 34 inches, 86.4 centimeters, and 48 inches, 1.219 meters, above the ground. All gates for the pool enclosure shall open outward from the pool.

(3) The gate or door shall have no opening greater than 0.5 inches, 1.27 centimeters, within 18 inches, 45.7 centimeters, of the latch release mechanism.

(4) Bathing areas must be separated from non-bathing areas by barriers with a minimum height of 4 feet, 1.22 meters, or by a minimum of 5 feet, 1.53 meters, distance separation.

**R392-302-15. Depth Markings and Safety Ropes.**

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high.

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special

activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

**R392-302-16. Circulation Systems.**

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The operator shall maintain the normal water line of the pool at the overflow rim of the gutter, if an overflow gutter is used, or at the midpoint of the skimmer opening if skimmers are used whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if the pool operator can demonstrate that the safety of the bathers is not compromised.

(a) The circulation system shall meet the minimum turnover time listed in Table 1.

(b) If a single pool incorporates more than one the pool types listed in Table 1, either:

(i) the entire pool shall be designed with the shortest turnover time required in Table 1 of all the turnover times for the pool types incorporated into the pool or

(ii) the pool shall be designed with pool-type zones where each zone is provided with the recirculation flow rate that meets the requirements of Table 1.

(c) The Health Officer may require the pool operator to demonstrate that a pool is performing in accordance with the approved design.

(d) The operator shall run circulation equipment continuously except for periods of routine or other necessary maintenance. Pumps with the ability to decrease flow when the pool has little or no use are allowed as long as the same number of turnovers are achieved in 24 hours that would be required using the turnover time listed in Table 1 and the water quality standards of R392-302-27 can be maintained. The circulation system must be designed to permit complete drainage of the system.

(e) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(f) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure precoat media filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R576-201, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with National Sanitation Foundation NSF/ANSI 50-2007, which is incorporated and adopted by reference.

(11) Written operational instructions must be immediately available at the facility at all times.

TABLE 1  
Circulation

Pool Type	Min. Number of Wall Inlets	Min. Number of Skimmers per 3,500 square ft. or less	Min. Turnover Time
1. Swim	1 per 10 ft.,	1 per 500 sq. ft.,	8 hrs.

		3.05 m.	46.45 sq. m.	
2. Swim, high bather load	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.	
3. Wading pool	1 per 20 ft., 6.10 m. min. of 2 equally spaced	1 per 500 sq. ft., 46.45 sq. m.	1 hr.	
4. Spa	1 per 20 ft., 6.10 m.	1 per 100 sq. ft., 9.29 sq. m.	0.5 hr.	
5. Wave	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.	
6. Slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.	
7. Vehicle slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.	
8. Special Purpose Pool	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.	

(12) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

(13) The circulation lines of jet systems and other forms of water agitation must be independent and separate from the circulation-filtration and heating systems.

#### R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-31(2)(l) and (3)(e), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be

designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

#### R392-302-18. Outlets.

(1) No feature or circulation pump shall be connected to less than two outlets unless the pump is connected to a gravity drain system or the pump is connected to an unblockable drain. All pool outlets shall meet the following design criteria:

(a) The grates or covers of all submerged outlets in pools shall conform to the standards of ASME A112.19.8a-2008.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets that are connected to a pump through a single common suction line must connect to the common suction line through pipes of equal diameter. The tee feeding to the common suction line from the outlets must be located approximately midway between outlets.

(d) An outlet system with more than one outlet connected to a pump suction line must not have any valve or other means to cut any individual outlet out of the system.

(e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.

(f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.

(g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2) and (3).

(h) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.

(i) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(j) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.

(2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):

- whether the drain is for single or multiple drain use;
- the maximum flow through the drain cover; and
- whether the drain may be installed on a wall or a floor.

(3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:

(a) the sump that is recommended by the drain cover or grate manufacturer;

(b) a sump specifically designed for that drain by a Registered Design Professional as defined in ASME

A112.19.8a-2008; or

(c) a sump that meets the ASME A112.19.8a-2008 standard.

(4) Notwithstanding Section R392-302-3, all public pools must comply with this subsection R392-302-18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(1)(g) and R392-302-18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:

(a) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-2002 or ASTM standard F2387;

(i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. An easily readable sign shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.

(iii) No operator shall allow the use of a pool that has a single drain with a safety vacuum release system if the safety vacuum release system is not functioning properly.

(b) Install an outlet system that includes no fewer than two suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(g) and 18(2) through (3)(c);

(c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system;

(d) Install an unblockable drain that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or

(e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (c)(1)(A)(ii)(I), (III), or (IV) at preventing or eliminating the risk of injury or death associated with pool drainage systems.

### **R392-302-19. Overflow Gutters and Skimming Devices.**

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at

100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with National Sanitation Foundation NSF/ANSI 50-2007 standards or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a system to prevent air-lock in the suction line. The anti-air-lock may be accomplished through the use of an equalizer pipe or a surge tank or through any other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level. If an equalizer pipe is used, the following requirements must be met:

(a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;

(b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392-302-16(3);

(c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover in the floor of the pool that

meets the requirements of ASME A112.19.8a-2008; and

(d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ASME A112.19.8a-2008 and is sized to accommodate the design flow requirement of R392-302-19(5).

(9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.

(10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 22.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip-resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

#### **R392-302-20. Filtration.**

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, precoat media filter, a cartridge filter or other filter types deemed equivalent by the Department. All filters must comply with the standard NSF/ANSI 50-2007.

(4) Gravity and pressure rapid sand filter requirements.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filter requirements.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area. The minimum flow rate requirement may be reduced to a rate of no less than 10 gallons per minute per square foot of bed area where a multiple filter system is provided, and where the system includes a valve or other means after the filters which is designed to

regulate the backwash flow rate and to assure that adequate backwash flow can be achieved through each filter per the filter manufacturer's requirements.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Vacuum or pressure type precoat media filter requirements.

(a) The filtering area must be compatible with the design pump capacity as required by R392-302-16(7). The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat media filter is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a visible precautionary statement warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth or other filter aids must be provided.

(7) The department may waive National Sanitation Foundation, NSF/ANSI 50-2007, standards for precoat media filters and approve site-built or custom-built vacuum precoat media filters, if the precoat media filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum precoat media filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exists, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filter requirements.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

#### **R392-302-21. Disinfectant and Chemical Feeders.**

(1) A pool must be equipped with a disinfectant feeder or feeders which conform to the National Sanitation Foundation, NSF/ANSI 50-2007, standards relating to adjusted output rate chemical-feeding equipment and flow through chemical feeding equipment for swimming pools, or be deemed equivalent by the department.

(2) Where oxidation-reduction potential controllers are used, the operator shall perform supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the operator shall perform inspections, calibration checks, and cleaning of sensor probes at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) The operator shall not keep substances which are incompatible with chlorine in the chlorine enclosure.

(c) The operator shall secure chlorine cylinders to prevent them from falling over. The operator shall maintain an approved valve stem wrench on the chlorine cylinder so the supply can be shut off quickly in case of emergency. The operator shall keep valve protection hoods and cap nuts in place except when the cylinder is connected.

(d) Doors to chlorine gas and equipment rooms must be labeled DANGER CHLORINE GAS in letters at least 4 inches, 10.16 centimeters, in height and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow

switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) The operator shall keep an unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

#### **R392-302-22. Safety Requirements and Lifesaving Equipment.**

(1) Areas of a public pool with water depth greater than six feet or a width greater than forty feet and a depth greater than four feet where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard stations in accordance with Table 2. Elevated lifeguard stations shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet and a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a first aid kit which includes a minimum of the following items:

- 2 Units eye dressing packet;
- 2 Units triangular bandages;

- 1 CPR shield;
- 1 scissors;
- 1 tweezers;
- 6 pairs disposable medical exam gloves; and
- Assorted types and sizes of the following: self adhesive bandages, compresses, roller type bandages and bandage tape.

(a) The operator shall keep the first-aid kit filled, available, and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. The operator shall maintain it in good repair and operable condition. The operator and lifeguards shall prevent the removal of lifesaving equipment or use of it for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign must be placed in plain view and shall state: WARNING - NO LIFEGUARD ON DUTY and BATHERS SHOULD NOT SWIM ALONE, with clearly legible letters, at least 4 inches high, 10.16 centimeters. In addition, the sign must also state CHILDREN 14 AND UNDER SHOULD NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2  
Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Station	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube (used as a substitute for ring buoys when lifeguards are present)	1 per 2,000	None
Life Pole or Shepherds Crook	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction	1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

**R392-302-23. Lighting, Ventilation and Electrical Requirements.**

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if the pool operator demonstrates that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, artificial lighting shall be provided so that all areas of the pool, including the deepest portion of the pool shall

be visible. Underwater lights shall provide illumination equivalent to 0.5 watt of incandescent lamp light per square foot, 0.093 square meter, of pool water surface area. The Local Health Officer may waive underwater lighting requirements if overhead lighting provides a minimum of 15 foot candles, 161 lux, illumination over the entire pool surface.

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Fire Protection Association 70: National Electrical Code 2005 edition which is adopted and incorporated by reference.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

- (i) For underwater lighting,
- (ii) electrically powered automatic pool shell covers, and
- (iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, pool equipment rooms, access spaces, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

**R392-302-24. Dressing Rooms.**

(1) The operator shall maintain all areas and fixtures within dressing rooms in an operable, clean and sanitary condition. Dressing rooms must be equipped with minimum fixtures as required in Subsection R392-302-25(1). The local health department may exempt any bathers from the total number of bathers used to calculate the fixtures required in Subsection R392-302-25(1) who have private use fixtures available within 150 feet, 45.7 meters of the pool.

(2) A separate dressing room with required shower areas must be provided for each sex. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) A dressing room must exit to the shallowest area of the pool. The dressing room exit door and the pool deck must be separated by at least 10 feet, 3.05 meters, and be connected by an easily cleanable walkway.

**R392-302-25. Toilets and Showers.**

(1) The minimum number of toilets and showers for dressing room fixtures must be based upon the designed maximum bather load. Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one sex. The minimum number of sanitary fixtures must be in accordance with Table 4.

TABLE 4  
Sanitary Fixture Minimum Requirements

Water Closets	
Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(2) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(3) One shower head for each sex must be provided for each 50 bathers or fraction thereof.

(4) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) Soap must be dispensed at all lavatories and showers. Soap dispensers must be constructed of metal or plastic. Use of bar soap is prohibited.

(6) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(7) At least one covered waste can must be provided in each restroom.

**R392-302-26. Visitor and Spectator Areas.**

(1) Visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool. Service animals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

**R392-302-27. Disinfection and Quality of Water.**

(1) Disinfection Process.

(a) A pool must be continuously disinfected by a process which:

(i) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water;

(ii) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use;

(iii) Is compatible for use with other chemicals normally used in pool water treatment;

(iv) Does not create harmful or deleterious effects on

bathers if used according to manufacturer's specifications; and  
(v) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(b) The active disinfecting agent used must meet the concentration levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(2) Testing Kits.

(a) An easy to operate pool-side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter, must be provided at each pool.

(b) If chlorine is the disinfectant used, it must be tested by the diethyl-p-phenylene diamine method, the leuco crystal violet method, or another test method approved by the Department.

(c) If cyanuric acid or stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 milligrams per liter must be provided.

(d) Expired test kit reagents may not be used.

(3) Chemical Quality of Water.

(a) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten milligrams per liter, but may not exceed 100 milligrams per liter.

(b) The difference between the total chlorine and the free chlorine in a pool shall not be greater than 0.5 milligrams per liter. If the concentration of combined residual chlorine is greater than 0.5 milligrams per liter the operator shall breakpoint chlorinate the pool water to reduce the concentration of combined chlorine.

(c) Total dissolved solids shall not exceed 1,500 milligrams per liter over the startup total dissolved solids of the pool water.

(d) Total alkalinity must be within the range from 100 to 125 milligrams per liter for a plaster lined pool, 80 to 150 milligrams per liter for a spa pool lined with plaster, and 125 to 150 milligrams per liter for a pool lined with other approved construction materials.

(e) A calcium hardness of at least 200 milligrams per liter must be maintained.

(f) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

(4) Water Clarity and Temperature.

(a) The water must have sufficient clarity at all times that the drain grates or covers in the deepest part of the pool are readily visible. As an alternative test for clarity, a black disk, six inches in diameter, must be readily visible if placed on a white field in the deepest part of the pool.

(b) Pool water temperatures for general use should be within the range of 82 degrees Fahrenheit, 28 degrees Celsius, to 86 degrees Fahrenheit, 30 degrees Celsius.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 26 degrees Celsius.

(d) The local health departments may grant exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is:

$$SI = pH + TF + CF + AF - TDSF$$

SI means saturation index

TF means temperature factor

CF means calcium factor

mg/l means milligrams per liter

deg F means degrees Fahrenheit

AF means alkalinity factor

TDSF means total dissolved solids factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	mg/l	CF	mg/l	AF
32	0.0	25	1.0	25	1.4
37	0.1	50	1.3	50	1.7
46	0.2	75	1.5	75	1.9
53	0.3	100	1.6	100	2.0
60	0.4	125	1.7	125	2.1
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	250	2.0	250	2.4
94	0.8	300	2.1	300	2.5
105	0.9	400	2.2	400	2.6
128	1.0	800	2.5	800	2.9

Total Dissolved Solids

mg/l	TDSF
0 to 999	12.1
1000 to 1999	12.2
2000 to 2999	12.3
3000 to 3999	12.4
4000 to 4999	12.5
5000 to 5999	12.55
6000 to 6999	12.6
7000 to 7999	12.65
each additional 1000, add	.05

If the SATURATION INDEX is 0, the water is chemically in balance.  
 If the INDEX is a minus value, corrosive tendencies are indicated.  
 If the INDEX is a positive value, scale-forming tendencies are indicated.  
 EXAMPLE: Assume the following factors:  
 pH 7.5; temperature 80 degrees F, 19 degrees C;  
 calcium hardness 235; total alkalinity 100; and total dissolved solids 999.  
 pH = 7.5  
 TF = 0.7  
 CF = 1.9  
 AF = 2.0  
 TDSF = 12.1  
 TOTAL: 7.5 + 0.7 + 1.9 + 2.0 - 12.1 = 0.0  
 This water is balanced.

TABLE 6  
 DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine (milligrams per liter)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine (milligrams per liter)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (milligrams per liter)	4.0(1)	4.0(1)	4.0(1)
Iodine (milligrams per liter)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (milligrams per liter hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (TDS) over start-up TDS (milligrams per liter)	1,500	1,500	1,500
Cyanuric Acid (milligrams per liter)	10 to 100	10 to 100	10 to 100
Maximum Temperature (degrees Fahrenheit)	104	104	104
Calcium Hardness (milligrams per liter as calcium carbonate)	200(1)	200(1)	200(1)
Total Alkalinity (milligrams per liter as calcium carbonate)			
Plaster Pools	100 to 125	80 to 150	100 to 125
Painted or Fiberglass	125 to 150	80 to 150	125 to 150

Pools Saturation Index (see Table 5) Chloramines (combined chlorine residual, milligrams per liter)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
	0.5	0.5	0.5

Note (1): Minimum Value

(5) Pool Water Sampling and Testing.

(a) At the direction of the Local Health Officer, the pool operator or a representative of the local health department shall collect a pool water sample from each public pool at least once per month or at a more frequent interval as determined by the Local Health Officer. A seasonal public pool during the off season and any public pool while it is temporarily closed, if the pool is closed for an interval exceeding half of that particular month, are exempt from the requirement for monthly sampling. The operator or local health department representative shall submit the pool water sample to a laboratory approved under R444-14 to perform total coliform and heterotrophic plate count testing.

(b) The operator or local health department shall have the laboratory analyze the sample for total coliform and heterotrophic plate count using methods allowed under R444-14-4.

(c) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.

(d) A pool water sample fails bacteriological quality standards if it:

(i) Contains more than 200 bacteria per milliliter, as determined by the heterotrophic plate count or

(ii) Shows a positive test for presence of coliform or contains more than 1.0 coliform organisms per 100 milliliters.

(e) Not more than 1 of 5 samples may fail bacteriological quality standards. Failure of any bacteriological water quality sample shall require submission of a second sample within one lab receiving day after the sample report has been received.

**R392-302-28. Cleaning Pools.**

(1) The operator shall clean the bottom of the pool as often as needed to keep the pool free of visible dirt.

(2) The operator shall clean the surface of the pool as often as needed to keep the pool free of visible scum or floating matter.

(3) The operator shall keep all pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29(2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration

prior to allowing bathers to reenter the pool.

**R392-302-29. Supervision of Pools.**

(1) Public pools must be supervised by an operator that is certified or recertified by a program of training and testing that is approved by the Utah Department of Health. The local health department may determine the appropriate numbers of pools any one certified operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual operator's abilities.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(5) fail bacteriological quality standards as defined in Section R392-302-27(5), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) the pool operator measure and record the level of disinfectant residuals, pH, and pool water temperature four times a day (if oxidation reduction potential technology is used in accordance with this rule, the local health department may reduce the water testing frequency requirement) or

(b) the pool operator read flow rate gauges and record the pool circulation rate four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include:

(a) Name and phone number of nearest police, fire and rescue unit;

(b) Name and phone number of nearest ambulance service;

(c) Name and phone number of nearest hospital.

(7) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.

**R392-302-30. Supervision of Bathers.**

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool if direct fees are charged or public funds support the operation of the pool. If a public pool is normally exempt from the

requirement to provide lifeguard services, but is used for some purpose that would require lifeguard services, then lifeguard services are required during the period of that use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) A lifeguard must meet each of the following:

(a) Be trained and certified by the American Red Cross, Ellis and Associates, or an equivalent program as approved by the department in Standard Level First Aid, C.P.R. for professional rescuers, and Life Guarding.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2).

(c) Have full authority to enforce all rules of safety and sanitation.

(4) A lifeguard may not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(5) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(6) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 30 minutes with a work break of at least 10 minutes every hour.

(7) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) The operator and lifeguards shall exclude any person having a communicable disease transmissible by water from using the pool. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

(e) Easily readable placards embodying the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and offices.

(f) The lifeguards and operator shall only allow diaper changing in restrooms or changing stations not at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person must undergo a cleansing shower before returning to the pool.

**R392-302-31. Special Purpose Pools.**

(1) Special purpose pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(a) Special purpose pool projects require consultation with the local health department having jurisdiction in order that consideration can be given to areas where potential problems may exist and before deviations from some of the requirements are approved.

(b) The local health officer shall require such measures as deemed necessary to assure the health and safety of special purpose pool patrons.

- (2) Spa Pools.
- (a) This subsection supercedes R392-302-6(5). A spa pool shell may be a color other than white or light pastel.
- (b) Spa pools shall meet the bather load requirement of R392-302-7(1)(a).
- (c) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The department may grant exceptions to the maximum depth requirement for a spa pool designed for special purposes, such as instruction, treatment, or therapy.
- (d) This subsection supercedes R392-302-12(1)(f). A spa pool may be equipped with a single entry/exit. A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.
- (e) This subsection supercedes R392-302-12(3)(c). In a spa pool where the bottom step serves as a bench or seat, the bottom riser may be a maximum of 14 inches, 35.56 centimeters.
- (f) This subsection supercedes R392-302-13(1). A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa.
- (g) This subsection supercedes R392-302-13(5). The department may allow spa decks or steps made of sealed, clear-heart redwood.
- (h) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. The department may grant an exception to deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The common pool side wall may not exceed 12 inches, 30.48 centimeters, in width.
- (i) This subsection supersedes R392-302-15. The local health officer may exempt a spa pool from depth marking requirements if the spa pool owner can successfully demonstrate to the local health officer that bather safety is not compromised by the elimination of the markings.
- (j) A spa pool must have a minimum of one turnover every 30 minutes.
- (k) Spa pool air induction systems shall meet the requirements of R392-302-16(12)(a) through (b). Jet or water agitation systems shall meet the requirements of R392-302-16(13).
- (l) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.
- (m) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(4)(e); however, the following exceptions apply:
- (i) Multiple spa outlets shall be spaced at least three feet apart from each other as measured from the centers of the drain covers or grates or a third drain shall be provided and the separation distance between individual outlets shall be at the maximum possible spacing.
- (ii) The department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool if the outlets are located on side walls within three inches of the pool floor and a wet-vacuum is available on site to remove any water left in the pool after draining.
- (n) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.
- (o) A spa pool must be equipped with an oxidation reduction potential controller which monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27(5)(e).
- (p) A spa pool is exempt from the Section R392-302-22, except for Section R392-302-22(3).
- (q) The maximum water temperature for a spa pool is 104 degrees Fahrenheit, 40 degrees Celsius.
- (r) A spa pool shall meet the total alkalinity requirements of R392-302-27(3)(d).
- (s) A spa pool must have an easily readable caution sign mounted adjacent to the entrance to the spa or hot tub which contains the following information:
- (i) The word "caution" centered at the top of the sign in large, bold letters at least two inches in height.
- (ii) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.
- (iii) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.
- (iv) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.
- (v) Bathers should not use the spa pool alone.
- (vi) Pregnant women should not use the spa pool without consulting their physicians.
- (vii) Persons should not spend more than 15 minutes in the spa in any one session.
- (viii) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.
- (ix) Children under the age of five years are prohibited from bathing in a spa or hot tub.
- (x) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.
- (f) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.
- (3) Wading Pools.
- (a) Wading pools shall be separated from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.
- (b) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.
- (c) The deck of a wading pool may be included as part of adjacent pool decks.
- (d) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.
- (e) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.
- (f) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.
- (4) Hydrotherapy Pools.
- (a) A hydrotherapy pool shall at all times comply with R392-302-27 Disinfection and Quality of Water, R392-302-28 Cleaning of Pools and R392-302-29 Supervision of Pools unless it is drained cleaned, and sanitized after each individual use.
- (b) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.
- (c) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure

that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(d) A local health officer may grant an exception to section R392-302-31(4)(a) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

(5) Water Slides.

(a) Slide Flumes.

(i) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(ii) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(iii) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(iv) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(v) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(vi) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(b) Flume Clearance Distances.

(i) A distance of at least 4 feet, 1.22 meters, must be provided between the side of a slide flume exit and a splash pool side wall.

(ii) The distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(iii) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(iv) The distance between the side of the vehicle flume exit and the pool side wall must be at least 6 feet, 1.83 meters.

(v) The distance between nearest sides of adjacent vehicle slide flume exits must be at least 8 feet, 2.44 meters.

(vi) The distance between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(c) Splash Pool Dimensions.

(i) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(ii) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(iii) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches,

1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(iv) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(v) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(d) General Water Slide Requirements.

(i) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(ii) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(iii) Water slides shall meet the bather load requirements of R392-302-7(1)(d).

(e) Water Slide Circulation Systems.

(i) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(ii) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(iii) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(iv) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all National Sanitation Foundation, NSF/ANSI 50-2007, Section 6. Centrifugal Pumps, standards for pool pumps.

(v) Flume supply service pumps must have check valves on all suction lines.

(vi) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(vii) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(viii) Pump reservoir areas must be accessible for cleaning and maintenance.

(f) Caution Signs.

(i) A caution sign must be mounted adjacent to the entrance to a water slide that states at least the following warnings:

(A) The word caution centered at the top of the sign in large bold letters at least two inches in height.

(B) No running, standing, kneeling, tumbling, or stopping on flumes or in tunnels.

(C) No head first sliding at any time.

(D) The use of a slide while under the influence of alcohol or impairing drugs is prohibited.

(E) Only one person at a time may travel the slide.

(F) Obey instructions of lifeguards and other staff at all times.

(G) Keep all parts of the body within the flume.

(H) Leave the splash pool promptly after exiting from the slide.

(6) Interactive Water Feature Requirements.

(a) All parts of the interactive water feature shall be designed, constructed, maintained, and operated so there are no slip, fall, or other safety hazards, and shall meet the standards of

the construction code adopted by the Utah Legislature under Section 58-56-4. A copy of the construction code is available at the office of the local building inspector.

(b) Interactive water feature nozzles that spray from the ground level shall be flush with the ground, with openings no greater than one-half inch in diameter. Spray devices that extend above ground level shall be clearly visible.

(c) Areas adjacent to the water feature collection zones shall be sloped away at a minimum of two percent from the interactive water feature to deck drains or other approved surface water disposal systems. A continuous deck at least 3 feet, 0.91 meters, wide as measured from the edge of the collection zones must extend completely around the interactive water feature.

(d) Water discharged from all interactive water feature fountain or spray features shall freely drain by gravity flow through a main drain fitting to a below grade sump or collection system which discharges to a collector tank.

(e) All interactive water feature foggers and misters that produce finely atomized mists shall be supplied directly from a potable water source and not from the underground reservoir.

(f) The interactive water feature shall have an automated oxidation reduction potential (ORP) and pH controller installed and in operation whenever the feature is open for use. The controller shall be capable of maintaining disinfection and pH levels within the requirements for special purpose pools listed in Table 6. In addition, an approved secondary disinfection system that meets the requirements of R392-302-33 (4)(c) through (4)(f)(iii) shall be installed and in operation whenever the feature is open for use.

(g) A sign shall be posted in the immediate vicinity of interactive water feature stating that pets are prohibited.

(h) If the interactive water feature is operated at night, five foot-candles of light shall be provided in the all areas of the water feature. Lighting shall be installed in accordance with manufacturer's specifications and approved for such use by UL or NSF.

(i) Hydraulics.

(i) The interactive water feature filter system shall be capable of filtering and treating the entire water volume of the water feature within 30 minutes.

(ii) The interactive water feature filter system shall draft from the collector tank and return filtered and treated water to the tank via a minimum of 4 equally spaced inlet fittings. Inlet spacing shall also meet the requirements of section R392-302-17.

(iii) The interactive water feature circulation system shall be on a separate loop and not directly interconnected with the interactive water feature pump.

(iv) The suction intake of the interactive water feature pump in the underground reservoir shall be located adjacent to the circulation return line and shall be located to maximize uniform circulation of the tank.

(v) An automated water level controller shall be provided for the interactive water feature, and the drinking water line that supplies the feature shall be protected from any back flow by an air gap.

(vi) The water velocity through the feature nozzles of the interactive water features shall meet manufacturer's specifications and shall not exceed 20 feet per second.

(vii) The minimum size of the interactive water feature sump or collector tank shall be equal to the volume of 3 minutes of the combined flow of all feature pumps and the filter pump. Access lids or doors shall be provided to the sump and collector tank. The lids or doors shall be sized to allow easy maintenance and shall provide security from unauthorized access. Stairs or a ladder shall be provided as needed to ensure safe entry into the tank for cleaning and inspection.

(viii) The suction intake from the interactive water feature

circulation pump shall be located in the lowest portion of the underground reservoir.

(ix) A means of vacuuming and completely draining the interactive water feature tank shall be provided.

(j) An interactive water feature is exempt from:

(i) The wall requirement of section R392-302-10;

(ii) The ladder, recessed step, stair, and handrail requirements of section R392-302-12;

(iii) The fencing and access barrier requirements of section R392-302-14;

(iv) The outlet requirements of section R392-302-18;

(v) The overflow gutter and skimming device requirements of section R392-302-19;

(vi) The safety and lifesaving requirements of section R392-302-22, except that an interactive water feature shall be equipped with a first aid kit as required by subsection R392-302-22(3);

(vii) The dressing room requirements of section R392-302-24 as long toilets, lavatories and changing tables are available within 150 feet; and

(viii) The pool water clarity and temperature requirements of subsection R392-302-27(4).

### **R392-302-32. Advisory Committee.**

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

### **R392-302-33. Cryptosporidiosis Watches and Warnings.**

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign that meets the requirements of this section, the standard for "notice" signs established in ANSI Z353.2-2002, which is adopted by reference, and the approval of the local health officer to assure compliance with this section and the ANSI standard. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section and the ANSI standard for 10-foot viewing is available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high. The sign may need to be larger, depending on the placement of the sign, to meet the ANSI standard.

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case

letters at least 1.0 centimeters high and include the following four bulleted statements in black letters:

- All with diarrhea in the past 2 weeks shall not use the pool.

- All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

- All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

- Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

- (a) maintain the disinfectant concentration within the range between two mg/l (four mg/l for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five mg/l (10 mg/l for bromine);

- (b) maintain the pH between 7.2 and 7.5; and

- (c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 mg/l.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-33(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-33(4)(b).

- (b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 mg/l minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five mg/l. The operator of any public pool not required to have a lifeguard by R392-302-30(2) shall hyperchlorinate at least once weekly.

- (c) A full flow ultraviolet treatment system that meets the requirements of National Sanitation Foundation standard NSF/ANSI 50-2007, which is incorporated by reference. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

- (d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of National Sanitation Foundation standard NSF/ANSI 50-2007, which is incorporated by reference. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

- (e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal

operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

- (f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

- (i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-33(4)(a);

- (ii) assure safety for swimmers and pool operators; and

- (iii) comply with all other applicable rules and federal regulations.

TABLE 7

Chlorine Concentration and Contact Time to Achieve CT = 15,300

Chlorine Concentration	Contact Time
1.0 mg/l	15,300 minutes (255 hours)
10 mg/l	1,530 minutes (25.5 hours)
20 mg/l	765 minutes (12.75 hours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

(6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

**KEY: pools, spas, water slides**

**November 25, 2015**

**Notice of Continuation November 7, 2016**

**26-1-5**

**26-1-30**

**26-15-2**

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-400. Temporary Mass Gatherings Sanitation.**

**R392-400-1. Authority.**

This rule is authorized under Utah Code Sections 26-15-2, 26-1-5 and 26-1-30.

**R392-400-2. Purpose.**

It is the purpose of this rule:

- (1) to protect, preserve and promote the health and safety of the public;
- (2) to prevent and control the incidence of communicable diseases;
- (3) to reduce hazards to health and environment;
- (4) to maintain adequate sanitation and public health; and
- (5) to promote the general welfare of the public.

**R392-400-3. Definitions.**

- (1) "Department" means the Utah Department of Health (UDOH).
- (2) "Director" means the executive director of the Utah Department of Health or the executive director's designee.
- (3) "Drinking Water Station" means a location where a person may obtain safe drinking water free of charge.
- (4) "Emergency Medical Provider" means the same as Emergency Medical Services Provider as defined in 26-8a-102.
- (5) "First Aid Station" means a temporary or permanent enclosed space or structure where a person can receive first aid and emergency medical care.
- (6) "Health Officer" means the director of the local health department having jurisdiction or the health officer's designee.
- (7) "Operator" means a person who represents a group, corporation, partnership, governing body, association, or other public or private organization legally responsible for obtaining the necessary permits for the overall operation of a temporary mass gathering.
- (8) "Owner" means any person who alone, jointly, or severally with others:
  - (a) has legal title to any premises, with or without accompanying actual possession thereof or;
  - (b) has charge, care, or control of any premises, as legal or equitable owner, agent of the owner, or lessee.
- (9) "Permit" means a written form of authorization written in accordance with this rule.
- (10) "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.
- (11) "Safe Drinking Water" means potable water meeting State safe drinking water rules or bottled water as regulated by the Utah Department of Agriculture and Food.
- (12) "Solid Waste" means garbage, refuse, trash, rubbish, hazardous waste, dead animals, sludge, liquid or semi liquid waste, other spent, useless, worthless, or discarded materials or materials stored or accumulated for the purpose of discarding, materials that have served their original intended purpose.
- (13) "Staff" means any person who:
  - (a) works for or provides services for or on behalf of the operator or a vendor, or
  - (b) is a vendor at a gathering.
- (14) "Temporary Mass Gathering" or "Gathering" means an actual or reasonably anticipated assembly of 1000 or more people, which continues or can reasonably be expected to continue for two or more hours per day, at a site or sites for a purpose different from the designed use and usual type of occupancy. A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed

occupancy levels are exceeded.

(15) "Vendor" means any person who sells or offers food for public consumption.

(16) "Wastewater" means used water or water carried wastes.

**R392-400-4. Permit To Operate Required.**

(1) A person may not operate a temporary mass gathering without a valid written permit issued by the health officer.

(2) The health officer may exempt a parade from the permit requirement if the operator submits an application as required in Section R392-400-6 and the health officer determines that the availability of existing public sanitary facilities, drinking water and trash containers is sufficient to protect public health.

(3) A temporary mass gathering may not exceed 16 consecutive days unless otherwise approved by the health officer.

(4) The health officer may attach conditions or grant waivers to a permit, in accordance with this rule, in order to meet specific public health and safety concerns.

**R392-400-5. Gathering Operator Required On Site.**

(1) The operator shall establish a headquarters at the gathering site.

(2) The operator or the operator's designee shall be present at the gathering at all times during operating hours.

**R392-400-6. Permit Application Required.**

(1) The health officer shall prescribe the application process, and shall require the applicant to submit an application at least 15 days prior to the first advertisement of the gathering and at least 30 days prior to the first day of the gathering. The health officer may grant an exception to this requirement on a case by case basis because of the nature of the event, scarcity of problems associated with the event in the past or other public health related criteria.

(2) An application for a permit shall be submitted to the health officer and include the following information:

- (a) name, address, telephone number, email and fax number (if applicable) of the operator;
- (b) number of people expected to attend the gathering;
- (c) a description of the type of gathering to be held with the date(s) and times the gathering will be held;
- (d) estimated length of stay of attendees;
- (e) name, address, telephone number, email and fax number (if applicable) of property owner;
- (f) location of the gathering and a site plan delineating the area where the gathering is to be held including the following:
  - (i) the parking area available for patrons;
  - (ii) location of entrance, exit, and interior roadways and walks;
  - (iii) location, type, and provider of restroom facilities;
  - (iv) location and description of water stations;
  - (v) location and number of food stands, and the types of food to be served if known;
  - (vi) location, number, type, and provider of solid waste containers;
  - (vii) location of operator's headquarters at the gathering;
  - (viii) a plan to provide lighting adequate to ensure the safety of attendees and staff;
  - (ix) location of all parking areas designated for the gathering and under the operator's control.
  - (x) location of all first aid stations and emergency medical resources.
- (g) the name of the solid and liquid waste haulers with whom the operator has contracted, unless exempted by this rule;
- (h) a site clean up plan after the gathering;
- (i) total number, and qualifications of first aid station

personnel;

- (j) plan for directional and exit signs;
- (k) a plan developed by the operator to address nuisances or health hazards associated with animals present at the gathering;
- (l) plans to address hazardous conditions as required in Section R392-400-12;
- (m) information and plans on any artificially constructed structure or modified natural structure intended for recreational or therapeutic purposes where the public may be exposed to water via contact, ingestion, or aerosolization.
- (n) emergency medical services operational plan and the contact information of the emergency medical provider;
- (o) any other information specifically requested by the health officer as necessary to protect public health.

#### **R392-400-7. Inspections.**

- (1) The health officer may conduct inspections before, during, and after a gathering to ensure compliance with R392-400 and approved plans.
- (2) The operator shall provide the health officer with access to all areas of the gathering that the health officer deem necessary and the number of access credentials they request.
- (3) The operator shall effectively communicate the health officer's access privileges to staff.

#### **R392-400-8. Notice Of Violation Or Closing.**

- (1) The health officer may issue a notice of violation to the owner, operator or the operator's designee if the gathering fails to meet the requirements of this rule or the conditions of the permit.
- (2) The health officer shall, in accordance with R392-100 Food Service Sanitation, direct the disposition of any food items, including ice and water, that have been adulterated or are otherwise unfit for human consumption.
- (3) The health officer may issue a notice of closure of the gathering or part thereof to the owner, operator or the operator's designee if the health officer determines that conditions at the gathering constitute a serious or imminent health hazard.
- (4) No gathering site or part thereof that has been closed may be used for a gathering until the health officer determines that the conditions causing the closure have been abated and written approval is received from the health officer. The health officer shall remove the posted notice whenever the violation(s) upon which closing, and posting were based has been remedied.
- (5) No unauthorized person may deface or remove a posted notice from any gathering site that has been closed by the health officer.
- (6) The operator may appeal a notice or closure in accordance with the procedures established by the local Board of Health or the Utah Administrative Procedures Act, whichever is applicable.

#### **R392-400-9. Solid Waste Management.**

- (1) The operator shall contract with a solid waste hauler approved by the health officer.
- (2) The operator shall provide and strategically locate a sufficient number of covered waste containers approved by the health officer to effectively accommodate the solid waste generated at the gathering.
  - (a) The operator shall provide waste containers next to the hand wash stations.
- (3) The operator shall ensure that the waste containers are emptied as often as necessary to prevent overflowing, littering, or insect or rodent infestation.
- (4) The operator shall ensure that solid waste is cleaned from the property periodically during the gathering and that, within 24 hours following the gathering, the property is free of solid waste and is clean. The health officer may allow for more

than 24 hours to clean up the site because of the time of year, nature of the event or other extenuating circumstances if the health officer is satisfied that the extension will not adversely affect public health

- (5) The operator shall ensure that solid waste is prevented from being blown from the gathering site onto adjacent properties.
- (6) The operator shall ensure that all solid waste is collected and disposed of at a solid waste disposal or recycling facility meeting State and local solid waste disposal facility requirements.
- (7) The operator, staff, participants, and spectators shall comply with all applicable State and local requirements for solid waste management.

#### **R392-400-10. Site Maintenance.**

- (1) All buildings, structures and overnight parking provided for the gathering shall be maintained safe, clean, in good repair, and shall comply with all applicable laws.
- (3) The operator shall eliminate any infestation of vermin within any part of a structure intended for occupancy, food storage, or restroom facilities prior to, during, and immediately following a gathering.
- (4) The operator is responsible for the maintenance and sanitation of the gathering site and facilities. The operator shall take steps to prevent and abate any nuisance or insanitary condition which may develop.
- (5) A gathering site shall be constructed to provide surface drainage adequate to prevent flooding of the gathering site and to prevent water related nuisances on adjacent properties.
- (6) Sufficient signs shall identify and show the location of first aid, restroom and drinking water facilities so spectators and participants can readily find them from any place on the gathering site.
- (7) The operator shall provide lighting adequate to ensure the safety of attendees.
- (8) All parking areas used for the gathering and under the control of the gathering operator must meet the requirements of this rule.

#### **R392-400-11. Emergency Medical Care Requirements.**

- (1) The operator shall ensure that the gathering has at least one first aid station. Emergency medical care and necessary supplies and equipment shall be provided as determined by the emergency medical provider and the emergency medical operations plan. The health officer or emergency medical provider may require more than one first aid station.
- (2) First aid stations shall afford privacy to a person receiving care or treatment.
- (3) First aid stations shall be of sufficient size to accommodate the number of care givers required, and the predicted number of sick or injured persons.
- (4) First aid stations shall be strategically located to provide expedient medical care for those attending or participating in the gathering.
- (5) First aid stations shall be easily accessible by emergency vehicles. The operator shall provide the emergency medical provider a map of the gathering site which includes location of first aid stations, emergency vehicle ingress and egress routes, landing zones (if applicable) and rendezvous locations.
- (6) A first aid station shall be clearly marked and identifiable as a first aid station.
- (7) The health officer or emergency medical provider may require additional emergency medical services personnel as deemed necessary.
- (8) The operator shall ensure that all medical staff have access to telephones or radios to contact outside emergency medical services.

(9) The local health officer or emergency medical provider may require the operator to provide dedicated stand-by ambulances and personnel at the gathering.

(10) The operator shall ensure that the staff person in charge of the first aid station keeps accurate records of patients and treatment, and that the health officer is notified of all cases involving a serious injury or communicable disease in accordance with R386-702 Communicable Disease Rule and R386-703 Injury Reporting Rule.

**R392-400-12. Hazardous Conditions.**

The operator shall develop contingency plans for dangerous conditions which may occur during the gathering. The plans may include evacuation, cancellation or delay of the gathering and provision for support facilities.

**R392-400-13. Food Protection.**

(1) The operator and vendors shall comply with R392-100 Food Service Sanitation.

(2) The operator shall assure that food vendors obtain required food service operating permits from the health officer.

**R392-400-14. Safe Drinking Water Supply Requirements.**

(1) The operator shall ensure that all drinking water is from a state-approved drinking water system or commercially bottled water meeting 21 CFR 129 (April 1, 2015) and 21 CFR 165.110 (April 1, 2015) from a company registered with the U.S. Food and Drug Administration and the Utah Department of Agriculture and Food.

(2) Drinking water hauled to the gathering shall be hauled and dispensed in a manner that protects public health as determined by the health officer.

(3) The operator shall provide water free of charge and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff.

(4) At least four drinking water stations are required. An additional drinking water station is required for each additional 500 attendees above 1000 persons. The health officer may reduce the number of additional drinking water stations or require more than one drinking water station for each additional 500 attendees above 1000 persons because of the time of year, heat index, nature of the event or other public health related criteria. If containers are needed to drink the water at the required drinking water stations, the operator must provide single use containers.

**R392-400-15. Wastewater Disposal Requirements.**

(1) All wastewater shall be disposed of in accordance with state and local wastewater rules.

(3) The operator may use portable restroom facilities and wastewater holding tanks as determined by the health officer.

(4) The number of toilets shall be provided in accordance with Table 1.

TABLE 1  
Minimum Numbers of Toilets Required

Peak Crowd	Average Time at Gathering (hours)				
	1	2	3	4	5
1000	4	6	8	8	9
2000	5	6	9	12	14
3000	6	9	12	16	20
4000	8	13	16	22	25
5000	12	15	20	25	31
6000	12	15	23	30	38
7000	12	18	26	35	44
8000	12	20	30	40	50
10000	15	25	38	50	63
12500	18	31	47	63	78

15000	20	38	56	75	94
17500	22	44	66	88	109
20000	25	50	75	100	125
25000	38	69	99	130	160
30000	46	82	119	156	192
35000	53	96	139	181	224
40000	61	109	158	207	256
45000	68	123	178	233	288
50000	76	137	198	259	320
55000	83	150	217	285	352
60000	91	164	237	311	384
65000	98	177	257	336	416

each additional

10,000	15	25	38	50	63
--------	----	----	----	----	----

(table continued for 6-10 hours)

	6	7	8	9	10
--	---	---	---	---	----

1000	9	11	12	13	13
2000	16	18	20	23	25
3000	24	26	30	34	38
4000	30	35	40	45	50
5000	38	44	50	56	63
6000	45	53	60	68	75
7000	53	61	70	79	88
8000	60	70	80	90	100
10000	75	88	100	113	125
12500	94	109	125	141	156
15000	113	131	150	169	188
17500	131	153	175	197	219
20000	150	175	200	225	250
25000	191	221	252	282	313
30000	229	266	302	339	376
35000	267	310	352	395	438
40000	305	354	403	452	501
45000	343	398	453	508	563
50000	381	442	503	564	626
55000	419	486	554	621	688
60000	457	531	604	677	751
65000	495	575	654	734	813

each additional

10,000	75	88	100	113	125
--------	----	----	-----	-----	-----

(a) If alcoholic beverages are consumed at the gathering, the operator shall increase the number of required toilets by 40%.

(b) Five percent, with a minimum of one, of the required number of toilets shall be handicap accessible and shall be identified by the International Symbol of Accessibility in compliance with 36 CFR 1191 (July 1, 2011), Appendices B and D, of the Americans with Disabilities Act.

(c) For an event lasting longer than ten hours, the number of required toilets is calculated by adding the number of toilets for ten hours to the number of toilets for those hours over ten or a portion thereof, as determined in Table 1.

(d) The operator shall locate portable toilets a minimum of 100 feet from any food service operation and not more than 300 feet from grand stand or spectator or from other areas of activity which pertain to the gathering, as outlined in the permit application. Where site conditions limit the placement of portable toilets, the health officer may allow exemptions to these distances.

(e) The operator shall provide working hand wash stations at a minimum rate of one per ten portable toilets or portion thereof. The operator shall provide soap, water and single use towels at each hand wash station. Where conditions make the use of soap and water impractical, the health officer may allow sanitizing gel in place of soap and water. Sanitizing gel may not be used in place of soap and water at hand wash stations used by food service workers.

(f) The operator shall provide a minimum of one covered trash container for every ten portable toilets or portion thereof.

(g) The operator shall ensure that all portable toilets are of sound construction (such as non-absorbent polyethylene), easily cleanable, and durable.

(h) Each portable toilet must be secured against vandalism and adverse weather conditions by tie downs, anchors or similar

effective means.

(i) The operator shall contract with a liquid waste hauler that is permitted by the local health department in accordance with R317-550, Rules for Liquid Waste Operations.

(l) The operator shall ensure that all wastewater is removed from each portable toilet at least once every 24 hours or more frequently as necessary. On a case by case basis, the health officer may change this frequency because of the time of year, weather conditions, nature of the event or other public health related criteria. All wastewater removed shall be disposed of at a wastewater treatment facility in accordance with State and local wastewater disposal laws.

(m) The operator shall ensure that each portable toilet is serviced and sanitized as necessary to maintain sanitary conditions.

(n) At the conclusion of the gathering, each portable restroom unit must be serviced then removed within 48 hours. The health officer may extend or shorten this time because of the time of year, weather conditions, the nature of the event or to meet other public health related criteria.

**R392-400-16. Penalty.**

(1) Any person who violates any provision of this rule may be assessed a penalty as provided in Subsection 26-23-6.

(2) Each day such violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for all expenses incurred by the department and local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

**R392-400-17. Severability.**

If a provision, clause, sentence, or paragraph of this rule or the application thereof to any person or circumstances shall be ruled invalid, such ruling shall not affect the other provisions or applications of this rule, and to this end the provisions of this rule are severable.

**KEY: public health, temporary mass gatherings, special events**

**November 1, 2016**

**26-15-2**

**Notice of Continuation November 21, 2016**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-401. Roadway Rest Stop Sanitation.****R392-401-1. Definitions.**

Director - shall mean the Executive Director of the Utah Department of Health.

Roadway Rest Stop - shall mean any building, or buildings, or grounds, parking areas, including the necessary toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. It does not include scenic view or roadside picnic areas or other parking areas if these are properly identified as not offering public facilities.

Wastewater - shall mean discharges from all plumbing facilities such as rest rooms, kitchen, and laundry fixtures either separately or in combination.

**R392-401-2. General.**

2.1 It shall be the duty of each person operating a roadway rest stop in the State of Utah to carry out the provisions of these regulations.

2.2 Severability - If any provision of this code, or its application to any person or circumstances is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this code, shall not be affected thereby.

2.3 Roadway rest stops shall be designed and constructed to provide adequate surface drainage and shall be isolated from any existing or potential health hazard or nuisance.

2.4 All applicable building, zoning, electrical, health, fire codes and all local ordinances shall be complied with.

**R392-401-3. Water Supply.**

3.1 Potable water supply systems for use in roadway rest stops shall meet the requirements of the State of Utah rules and regulations relating to public drinking water supplies.

3.2 In addition to the requirements of the rules and regulations relating to public drinking water supplies, the design of water system facilities shall be based on the suppliers engineer's estimates of water demands, but shall in no case be less than the following:

Source Capacity - 7 gallons per vehicle served during peak day (with flushometer valves).

Storage Volume - 3.5 gallons per vehicle served during peak day (with flushometer valves).

Distribution System Capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. The peak hourly flow shall be calculated on a per building basis for the number of fixture units as presented in the Utah Plumbing Code.

Other exceptions to the above requirements may be made as permitted by the State of Utah public drinking water rules.

3.2.1 The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

3.3 Construction of a public drinking water supply system intended to serve occupants of any roadway rest stop shall not commence until plans prepared by a licensed professional registered engineer (in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act) have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction,

the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or local health department having jurisdiction.

3.3.1 All systems must be monitored in accordance with the State of Utah public drinking water rules in cooperation with the local health department in that jurisdiction.

3.4 Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected, and a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample, must be obtained before being placed into service.

3.5 In any roadway rest stop where it is not feasible to pipe water into the area, an alternate supply may be permitted upon approval of the Director or director of the local health department having jurisdiction.

**R392-401-4. Wastewater.**

4.1 All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the roadway rest stop property line.

4.2 Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the Utah rules for waste disposal. Unless water usage rates are available, design shall be based on not less than five (5) gallons per day per vehicle.

4.3 All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Environmental Quality, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

**R392-401-5. Plumbing.**

5.1 Adequate plumbing fixtures shall be made available at all roadway rest stops. Water closets and lavatories shall be provided for each sex. The total number of fixtures required shall be based upon survey results conducted to determine traffic density and estimated rest stop use, assuming that one water closet will serve 9 vehicles per hour. Sanitary drinking fountains shall be provided for use at roadway rest stops except when otherwise determined by the Director or director of the local health department having jurisdiction. Common drinking cups are prohibited. A service sink shall be installed to facilitate cleanup procedures.

5.2 Where water cannot be made available, exceptions to the above requirements may be made upon approval of the Director or local health authorities having jurisdiction. Toilet facilities other than the water flush type may be installed when approved by the Director or local health authorities having jurisdiction.

5.3 Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by a sound-resistant wall. Direct line of sight to each rest room shall be effectively obstructed.

5.4 Soap and toilet tissue in suitable dispensers and individual towels or other approved hand drying facilities and suitable waste receptacles with lids should be provided in each rest room, except as provided in Section 5.2.

5.5 Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure.

5.6 All plumbing installed in roadway rest stops shall comply with the provisions of the Utah Plumbing Code and applicable local plumbing codes.

**R392-401-6. Solid Wastes.**

6.1 All solid wastes originating in any roadway rest stop shall be stored in a sanitary manner in approved, watertight containers with lids, or the equivalent, approved by the local health department. The containers shall be conveniently located, and the contents shall be disposed of in a manner approved by the State or local health department having jurisdiction.

**R392-401-7. Maintenance.**

7.1 All buildings, equipment, facilities and ground surrounding them shall be maintained in a clean and operable condition.

7.2 All necessary means shall be employed to eliminate or control any infestations of insects and rodents within all parts of the roadway rest stop. This shall include effective screening or other approved control of outside openings in structures intended for public use.

**KEY: public health, recreation areas**

**1987**

**Notice of Continuation November 7, 2016**

**26-15-2**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-402. Mobile Home Park Sanitation.****R392-402-1. Definitions.**

Director - shall mean the Executive Director of the Utah Department of Health.

Mobile Home - shall mean a factory assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units on its (their) own running gear and designed to be used as a dwelling unit(s) without a permanent foundation\*. A modular home transported on wheels to its foundation shall not be considered a mobile home.

Mobile Home Park - shall mean a parcel (or contiguous parcels) of land which has been so designed and improved that it contains three or more mobile home lots available to the general public for the placement thereon of mobile homes for occupancy.

Service Building\*\* - shall mean a building housing toilets, lavatories, bathing facilities, a service sink, and may also include laundry and other accommodations as may be required. Comfort of the occupant is provided for by adequate heating, lighting and ventilation.

Wastewater - shall mean discharges from all plumbing facilities, such as rest rooms, kitchen and laundry fixtures either separately or in combination.

\*The phrase "without a permanent foundation" indicates that the mobile support system is maintained with the intent that the unit may be moved at the convenience of the owner.

\*\*See Service Building.

**R392-402-2. General.**

2.1 It shall be the duty of each person operating a mobile home park in the State of Utah to carry out the provisions of these regulations. Such person should also have the duty of controlling the conduct of park occupants to this end, and shall make at least one daily inspection of the entire mobile home park for these purposes.

2.2 Severability - If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this code, shall not be affected thereby.

2.3 Mobile home park sites shall be designed and constructed to provide adequate surface drainage, and shall be isolated from any existing or potential health hazard or nuisance.

2.4 All applicable building, zoning, electrical, health, fire codes and all local ordinances shall be complied with.

**R392-402-3. Water Supplies.**

3.1 Potable water supply systems for use by mobile home park occupants shall meet the requirements of the State of Utah rules and regulations relating to public drinking water supplies.

3.2 In addition to the requirements of the rules and regulations relating to public drinking water supplies, the design of water system facilities shall be based on the suppliers engineer's estimates, but shall in no case be less than the following:

Source Capacity - 800 gallons per day per mobile home unit, peak daily flow.

Storage Volume - 400 gallons per mobile home unit, average daily flow.

Distribution System Capacity - Shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. The peak hourly flow requirements shall meet or exceed those shown on Fig. 3.1.

Other exceptions to the above requirements may be permitted on a case-by-case basis as permitted by the State of Utah public drinking water rules.

3.2.1 The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Special information on watering requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

3.3 Construction of a public drinking water supply system intended to serve occupants of any mobile home park shall not commence until plans prepared by a licensed professional registered engineer (in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act) have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction, the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or local health department having jurisdiction.

3.3.1 All systems must be monitored in accordance with the State of Utah public drinking water rules and in cooperation with the local department having jurisdiction.

3.4 Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample, must be obtained before being placed into service.

3.4.1 Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the Director or director of the local health department having jurisdiction.

3.5 In any mobile home park, the following requirements shall apply:

3.5.1 Water service lines shall be made available to each mobile home space in accordance with the requirements of the Utah Plumbing Code and as further required in the following sections.

3.5.2 Shut-off valves on water connections for individual mobile homes shall be of the inverted key pattern stop-and-waste type or an approved anti-siphon yard hydrant.

3.5.3 Water connections serving individual mobile homes shall be at least 4 inches above the surrounding surface and shall be separated at least 5 feet horizontally from the sewer riser for such mobile homes. Water and sewer lines serving mobile home connections shall be separated at least 10 feet horizontally. Water and sewer lines may be installed closer, provided the following is adhered to:

3.5.3.1 The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the wastewater drainage line at its highest point, and in no instance less than 24 inches horizontal separation.

3.5.3.2 The water service pipe shall be placed on an undisturbed shelf excavated at one side of the common trench.

3.5.3.3 The number of joints in the service pipes shall be kept to a minimum. Materials and joints of both the water and sewer pipe shall be of a strength and durability, and so installed to prevent leakage under adverse conditions.

**R392-401-4. Wastewater.**

4.1 All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the mobile home park property line.

4.2 Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the State of Utah rules for waste disposal. Unless water usage rates are available, design shall be

based on not less than 400 gallons per day per mobile home unit.

4.3 All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Environmental Quality, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

4.3.1 Sewer service shall be made available to each designated mobile home space in accordance with the State of Utah rules for waste disposal.

4.3.2 Sewer risers serving individual mobile homes shall be provided with tight covers when not in use.

4.3.3 A trap is prohibited between the sewer riser and sewer lateral.

4.3.4 The connection and connecting line between the mobile home drain outlet and the sewer riser shall be watertight and self-draining.

4.3.5 The rim of the sewer riser shall not extend more than 4 inches above adjacent ground surface elevations. Surface drainage shall be directed away from the sewer riser. (See also Section 3.5.3.)

**R392-402-5. Plumbing, Service Building.**

5.1 The minimum plumbing fixtures which shall be available to all park occupants are as follows:

TABLE

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Park Occupants*	
	Males	Females
Water Closets	1:50	1:25
Urinals	1:50	--
Lavatories	1:50	1:50
Shower**	1:35	1:35

\*Or fraction thereof. The number of park occupants shall be calculated on the basis of 3.5 persons for each mobile home.

\*\*Showers are optional, but if provided shall comply with the table. Water system requirements under Section 3.2 may be modified to compensate for the absence of showers upon approval of the Director.

**Service Building**

5.2 In any mobile home park which accepts patrons with dependent recreational vehicles or tents, adequate service building facilities shall be provided and shall meet the following requirements:

5.2.1 They shall be located not less than 15 feet and not more than 500 feet from any living spaces served.

5.2.2 They shall be of permanent construction, and be provided with adequate light, heat and ventilation.

5.2.3 They shall be properly maintained and operated with interiors of smooth, moisture resistant materials, to permit frequent washing and cleaning.

5.2.4 They shall be adequately equipped with lavatories and with flush type toilet fixtures to serve all mobile home parking spaces not otherwise provided with such facilities.

5.3 All plumbing in mobile home parks shall comply with provisions of the Utah Plumbing Code, and applicable local plumbing codes. (This section does not apply to individual mobile homes per se.)

5.4 Plumbing fixtures which normally require water for their operation shall be supplied with adequate potable water supply under pressure.

**R392-402-6. Operation and Maintenance.**

6.1 All buildings, rooms and equipment in service buildings and the grounds surrounding them shall be maintained in a clean and operable condition.

6.2 All necessary means shall be employed to eliminate or control any infestations of insects and rodents within all parts of any mobile home park. This shall include adequate screening, skirting, or other approved control of outside openings in structures intended for occupancy or for food storage.

6.3 Whenever provisions are made for the accommodation of any recreational vehicles, such as travel trailers, camp trailers, truck campers or motor homes, in any mobile home park, such accommodations must conform to the requirements of R392-301.

**R392-402-7. Solid Wastes.**

7.1 Solid wastes, originating in any mobile home park, shall be stored in a sanitary manner in approved, watertight containers with lids, or the equivalent, approved by the local health department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the state or local health department having jurisdiction.

**R392-402-8. Swimming Pools.**

8.1 Any swimming pool, wading pool or therapy pool made available to occupants of a mobile home park shall comply with R392-302 and with applicable local regulations.

**KEY: public health, mobile homes  
1987**

**26-15-2**

**Notice of Continuation November 8, 2016**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-501. Labor Camp Sanitation.****R392-501-1. Definitions.**

Director - shall mean the Executive Director of the Utah Department of Health.

Labor Camp shall mean one or more buildings, structures, tents or related facilities together with surrounding grounds set aside for use as living quarters for groups of migrant laborers or temporary housing facilities intended to accommodate construction, mining or demolition workers, etc.

Service Building - shall mean a building housing toilets, lavatories, bathing facilities, a service sink, and may also include laundry and such other facilities as may be required.

Wastewater - shall mean discharges from all plumbing facilities such as rest rooms, kitchen, and laundry fixtures, either separately or in combination.

**R392-501-2. General.**

2.1 It shall be the duty of each person operating a labor camp in the State of Utah to carry out the provisions of these regulations. Such person should also have the duty of controlling the conduct of camp occupants to this end, and should make at least one daily inspection of the entire camp while in operation, for these purposes. All camp toilet and washroom facilities shall be inspected as necessary.

2.2 Severability - If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this code, shall not be affected thereby.

2.3 All applicable building, zoning, electrical, health, fire, and animal control codes and all local ordinances must be complied with.

2.4 Labor camp sites shall be constructed to provide adequate surface drainage and shall be isolated at least 100 feet from barnyards, corrals and any existing or potential health hazard or nuisance.

**R392-501-3. Water Supply.**

3.1 Potable water supply systems for labor camp occupants shall meet the requirements of the State of Utah rules and regulations relating to public drinking water supplies.

3.2 In addition to the requirements of the rules and regulations relating to public drinking water supplies, the design of water system facilities shall be based on the suppliers engineer's estimates of water demands, but shall in no case be less than the following:

Source Capacity - 50 gallons per day per person.

Storage Volume - 25 gallons per person.

Distribution System Capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. The peak hourly flow should be calculated for the number of fixture units presented in the Utah Plumbing Code.

Other exceptions to the above requirements may be permitted on a case-by-case basis as permitted by the State of Utah public drinking water rules.

3.2.1 The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

3.3 Construction of a public drinking water supply system

intended to serve occupants of any labor camp shall not commence until plans prepared by a licensed professional registered engineer (in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act) have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction, the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or local health department having jurisdiction.

3.3.1 All systems must be monitored in accordance with the State of Utah public drinking water rules, and in cooperation with the local health department having jurisdiction.

3.4 Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample must be obtained before being placed into service.

3.4.1 Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the Director or director of the local health department having jurisdiction.

3.5 In any labor camp where it is infeasible to pipe water into the area, an alternate supply may be permitted upon approval of the Director or director of the local health department having jurisdiction.

**R392-501-4. Wastewater Disposal.**

4.1 All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the labor camp property line.

4.2 Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the State of Utah rules for waste disposal. Unless water usage rates are available, design shall be based on not less than 50 gallons per day per person.

4.3 All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Environmental Quality, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

**R392-501-5. Plumbing.**

5.1 Adequate plumbing fixtures shall be available to all labor camp occupants as required below:

5.2 Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by a sound-resistant wall. Direct line of sight to each rest room entrance shall be effectively obstructed.

5.3 Soap and toilet tissue in suitable dispensers, and individual towels or other approved hand drying facilities shall be provided in rest rooms. The use of common towels in connection with such facilities is prohibited except in single-family quarters.

5.4 Suitable waste receptacles with lids shall be provided for each rest room.

5.5 Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure. Water will be provided for showers and lavatories at a minimum temperature of 90 degrees F.

5.6 In camps where dormitory type facilities are provided or where individual family units are not plumbed, sanitary type drinking fountains shall be conveniently located.

5.7 All service buildings shall:

5.7.1 Be located not less than 15 feet and not more than 500 feet from any sleeping quarters served.

5.7.2 Where practical, be of permanent construction, and be provided with adequate light, heat and ventilation.

5.7.3 Have interiors of smooth, moisture-resistant material, to permit frequent washing and cleaning.

5.7.4 Have all outer openings effectively screened.

5.7.5 Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

5.8 Where water cannot be made available, exceptions to the above requirements may be granted upon approval of the Director or local health authorities having jurisdiction. Separate facilities for men and women are not required in single-family quarters.

5.9 All plumbing in labor camps shall comply with provisions of the Utah Plumbing Code, and applicable local plumbing codes.

5.10 Essential laundering facilities shall be available to camp occupants and if included as part of the labor camp facilities, shall provide for each 40 occupants, or fraction thereof, at least one laundry tray, washtub, or washing machine served with an adequate supply of water.

#### **R392-501-6. Maintenance.**

6.1 All buildings, rooms and equipment and the grounds surrounding them shall be maintained in a clean and operable condition and be protected from rubbish accumulation.

6.2 All necessary means shall be employed to eliminate and control any infestations of insects and rodents within all parts of any labor camp. This shall include approved screening or other control of outside openings in structures intended for occupancy or food service facilities.

6.3 Each structure made available for occupancy shall be of sound construction, shall assure adequate protection against weather, and shall include essential facilities to permit maintenance in a clean and operable condition. Comfort and safety of occupants shall be provided for by adequate heating, lighting, ventilation or insulation when necessary to reduce excessive heat. Total window area in permanent structures should be equal to at least 10 percent and in no case less than 5 percent of the floor area. Windows shall be openable or mechanical ventilation must be provided.

6.4 Each structure made available for occupancy shall comply with the requirements of the Uniform Building Code. This section shall not apply to tent camps.

6.5 In dormitory type facilities, beds shall be separated by a horizontal distance of at least five (5) feet, reducible to three (3) feet if beds are alternated head to foot, except in the case of double deck bunks, which shall have a minimum horizontal separation of six (6) feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the Director or director of the local health department having jurisdiction.

6.6 Each bed, bunk, cot or other sleeping facility for use by occupants shall be maintained in a sanitary condition. Mattresses, mattress covers, quilts, blankets, pillows, pillow slips, sheets, comforters, and other bedding shall be kept clean and in good repair. Bedding shall be made available to each occupant not furnishing his own. Pillows shall have pillow slips and sheets shall be large enough to completely cover mattresses. Bedding shall be changed daily or in between occupant use.

6.7 Floors, walls and ceilings in permanent and semi-permanent structures shall be of smooth, nonabsorbent, easily cleanable materials, kept clean and in good repair.

6.8 All combustion type room heating devices shall be supplied with proper vent pipes. Gas-fired facilities shall meet standards of the American Gas Association.

#### **R392-501-7. Food Service.**

7.1 All food, food service employees, ice, vending machines, food storage, preparation and serving facilities made available by the camp management except those restricted to individual or single-family quarters shall comply with R392-100.

7.2 Where occupant is permitted or required to cook his own food, a space for kitchen facilities shall be provided, and shall be equipped with a cooking stove in good working order and with adequate and sufficient fuel, a kitchen sink, a refrigerator and convenient storage space for food and necessary utensils. All food items provided by camp management shall be wholesome and suitable for human consumption.

#### **R392-501-8. Solid Wastes.**

8.1 Solid wastes originating in any labor camp shall be stored in a sanitary manner, in watertight containers with lids, or the equivalent, approved by the local health department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the state or local health department having jurisdiction.

**KEY: public health, migrant labor  
1987**

**Notice of Continuation November 8, 2016**

**26-15-2**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-60. Medicaid Policy for Pharmacy Program.****R414-60-1. Introduction.**

The Medicaid Pharmacy program reimburses for covered outpatient drugs dispensed to eligible Medicaid clients by a pharmacy enrolled with Utah Medicaid pursuant to a prescription from an enrolled prescriber operating within the scope of the prescriber's license.

**R414-60-2. Definitions.**

(1) "Covered outpatient drug" means a drug that meets all of the following criteria:

- (a) Requires a prescription for dispensing;
- (b) Has a National Drug Code number;
- (c) Is eligible for Federal Medical Assistance Percentages funds;
- (d) Has been approved by the Food and Drug Administration; and
- (e) Is listed in the Medi-Span drug file.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" is the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects all advertised savings, discounts, special promotions, or any other program available to the general public.

**R414-60-3. Client Eligibility Requirements.**

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) Outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to all Medicaid recipients, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for clients enrolled in an ACO.[]

**R414-60-4. Program Coverage.**

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

- (a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or
- (b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

- (a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

- (b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

- (c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

- (d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

- (e) Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.

- (f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 10 days must be reversed and any payment from Medicaid must be returned.

**R414-60-5. Limitations.**

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

- (a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

- (b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

- (c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

- (d) Prior authorization.

- (2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

- (3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

- (4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

- (5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

- (6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

- (7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

- (8) Medicaid covers only the following prescription cough and cold preparations meeting the definition of a covered outpatient drug:

- (a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;

- (b) Guaifenesin with Hydrocodone 100mg/5mL liquid;

- (c) Promethazine with Codeine liquid;

- (d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;

- (e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and

- (f) Carbinoxamine/Pseudoephedrine/DM 15mg/1mg/4mg/5mL liquid.

- (9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Generic Medication Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing. Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a one-hundred days' supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs not eligible for Federal Medical Assistance Percentages funds;

(b) Drugs for anorexia, weight loss or weight gain;

(c) Drugs to promote fertility;

(d) Drugs for the treatment of sexual or erectile dysfunction;

(e) Drugs for cosmetic purposes or hair growth;

(f) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(g) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(h) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(i) Drugs given by a hospital to a patient at discharge;

(j) Breast milk, breast milk substitutes, baby food, or medical foods, except for prescription metabolic products for congenital errors of metabolism;

(k) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

#### **R414-60-6. Copayment Policy.**

Medicaid clients are to pay any applicable copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1.

#### **R414-60-7. Reimbursement.**

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered outpatient drugs are reimbursed at the lesser of the following:

(a) The Average Wholesale Price less 17.4%;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(3) Dispensing fees are as follows:

(a) \$3.90 for urban pharmacies;

(b) \$4.40 for rural pharmacies;

(c) \$1 for covered over-the-counter drugs excluding liquid antacids, insulin, and oral contraceptives for all pharmacies;

(d) \$0.50 multiplied by the quantity dispensed divided by the package size for liquid antacids for all pharmacies;

(e) \$12.39 for pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid;

(f) \$8.90 for Category J drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;

(g) \$18.90 for Category K drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;

(h) \$22.90 for Category L drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;

(i) \$33.90 for Category M drugs identified in Attachment 4.19-B, Page 19a(2) of the Utah Medicaid State Plan;

(j) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(k) Medicaid will only pay one dispensing fee per month per covered outpatient drug per pharmacy for prescriptions for clients in nursing homes.

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee of \$8.90. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee of \$14.52 with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the Average Wholesale Price plus the dispensing fee or the billed charges.

#### **R414-60-8. Mandatory Patient Counseling.**

(1) Medicaid clients, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) Counseling is not required if a Medicaid client, or their representative, refuses the offer to counsel.

(3) The offer to counsel must be documented and producible upon request.

#### **R414-60-9. New Drug Products.**

A new drug product, including a new size or strength of an existing approved product, may be reviewed by the DUR Board to determine whether the drug should be subject to restrictions or limitations. New drugs may be withheld from coverage for no more than twelve weeks while restrictions or limitations are being evaluated.

#### **R414-60-10. Over-the-Counter Drugs.**

Medicaid covers over-the-counter drugs when the drug is listed on the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

#### **R414-60-11. Compounds.**

(1) Compounded non-sterile prescriptions are a covered benefit if at least one ingredient is a drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a drug that would otherwise qualify

for coverage, and is prepared by a pharmacy that has certified to Utah Medicaid that it adheres to the United States Pharmacopeia/National Formulary chapter <797> standard, and tests the final product for sterility, potency and purity.

(3) Claims for compounded drugs may be eligible for a dispensing fee for each covered ingredient, but limited to no more than three dispensing fees per claim regardless of the number of covered ingredients.

**KEY: Medicaid**

**December 1, 2016**

**Notice of Continuation April 30, 2012**

**26-18-3**

**26-1-5**

**R428. Health, Center for Health Data, Health Care Statistics.****R428-1. Health Data Plan and Incorporated Documents.****R428-1-1. Legal Authority.**

This rule is promulgated in accordance with Title 26, Chapter 33a.

**R428-1-2. Purpose.**

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

**R428-1-3. Health Data Plan Adoption.**

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

**R428-1-4. Incorporation by Reference.**

The following documents are adopted and incorporated by reference:

- (1) Utah Healthcare Facility Data Submission Guide, Version 1, January 15, 2016
- (2) HEDIS 2017, Volume 3: Specifications for Survey Measures, published by NCQA
- (3) HEDIS 2017, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA
- (4) Utah All-Payer Claims Database Data Submission Guide Version 2.2.1
- (5) Utah All-Payer Claims Database Data Submission Guide Version 3.0

**KEY: health, health policy, health planning**

**November 28, 2016**

**26-33a-104**

**Notice of Continuation November 10, 2016**

**R428. Health, Center for Health Data, Health Care Statistics.****R428-2. Health Data Authority Standards for Health Data. R428-2-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a.

**R428-2-2. Purpose.**

This rule establishes definitions, requirements, and general guidelines relating to the collection, control, use and release of data pursuant to Title 26, Chapter 33a.

**R428-2-3. Definitions.**

(1) The terms used in this rule are defined in Section 26-33a-102.

(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means any of the following Third Party Payers as defined in 26-33a-102(16):

(i) an insurer engaged in the business of health care or dental insurance in the state of Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26, Chapter 18 or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(x) a pharmacy benefit manager, defined to be a person that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of any other carrier defined in subsection R428-2-3.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service

provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Emergency Room Data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single visit and treatment of a patient in an emergency room into an emergency room data record.

(m) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "Healthcare claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(p) "Healthcare Facility" means a hospital or ambulatory surgical facility.

(q) "Healthcare Facility Data" means ambulatory surgery data, discharge data, or emergency room data.

(r) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(s) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(t) "Hospital" means a general acute hospital or specialty hospital as defined in Section 21-21-2 that is licensed under Rule R432.

(u) "Level 1 data element" means a required reportable data element.

(v) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(w) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(x) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(y) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(z) "Patient Social Security number" is the social security number of a person receiving health care.

(aa) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(bb) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying

individuals is minimal.

(cc) "Report" means a disclosure of data or information collected or produced by the committee or Office, including but not limited to a compilation, study, or analysis designed to meet the needs of specific audiences.

(dd) "Research Data Set" means a data extract or subset of a database intended for use by investigators or researchers for bona fide research purposes that may include identifiable information or where there is more than a minimal probability that the data could be used to identify individuals.

(ee) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(ff) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(gg) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

(hh) "Submission year" means the year immediately following the covered period.

(ii) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(jj) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(kk) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(ll) "Utah Healthcare Facility Data Submission Guide" means the document referenced in Subsection R428-1-4(1).

(mm) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(2)

(nn) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(3)

(oo) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(4) for data submissions required from April 1, 2015 to February 29, 2016 and the document referenced in Subsection R428-1-4(5) for data submissions beginning March 1, 2016.

#### **R428-2-4. Technical Assistance.**

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

#### **R428-2-5. Data Classification and Access.**

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall not:

(a) take any action that might provide information to any unauthorized individual or agency;

(b) scan, copy, remove, or review any information to which specific authorization has not been granted;

(c) discuss information with unauthorized persons which could lead to identification of individuals;

(d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall:

(a) maintain the data in a safe manner which restricts

unauthorized access;

(b) limit use of the data to the purposes for which access is authorized;

(c) report immediately any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in this section.

#### **R428-2-6. Editing and Validation.**

(1) Each data supplier shall review each required record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

(a) The Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check.

(b) The submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within 10 business days of the date the Office notified the supplier.

(3) The Office or its designee may reject any data submission that fails to conform to the submission requirements. A data supplier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office or its designee within 10 state business days of notice that the data does not meet the submission requirements.

#### **R428-2-7. Error Rates.**

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

#### **R428-2-8. Data Disclosure.**

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a.

(2) The Office may prepare reports relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

(a) the name, address, e-mail and telephone number of the requester;

(b) a statement of the purpose for which the data will be

used;

(c) agreement to other terms and conditions as deemed necessary by the Office.

(8) The committee may approve the release of a research data set to an institution, association or organization for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. The requester must provide:

(a) the name, address, e-mail and telephone number of the requester and for each person who will have access to the research data set;

(b) a statement of the purpose for which the research data set will be used;

(c) the starting and ending dates for which the research data set is requested;

(d) an explanation of why a public use data set could not be used for to accomplish the stated research purposes, including a separate justification for each element containing identified data requested;

(e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;

(f) evidence of competency to effectively use the data in the manner proposed;

(g) a satisfactory review from an Office-approved institutional review board;

(h) a guarantee that no further disclosure will occur without prior approval of the Office;

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

#### **R428-2-9. Penalties.**

(1) The Office may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a.

(3) Notwithstanding Subsection R428-2-9(2), any person that violates any provision of Title R428 may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

(4) Notwithstanding Subsection R428-2-9(2) and R428-2-9(3), a data supplier that violates any provision of Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(a) Not to exceed the sum of \$10,000 per violation

(b) Each day of violation is a separate violation

(c) Deadlines established in separate sections of Title R428 are considered as separate provisions.

(5) The Office may impose a fine on any data supplier that misses a deadline to submit data required in Title R428 as follows:

(a) A fine of \$250 per violation shall be imposed until the data has been supplied as required

(b) The fines shall increase to \$500 per violation for each violation when any data supplier that is currently in violation misses another deadline

(c) After forty-five consecutive calendar days of violation, the Office may adjust the per day penalty subject to the limits in (4)(a) taking into account the following aggravating and mitigating circumstances:

(i) Prior violation history and history of compliance

(ii) Good faith efforts to prevent violations

(iii) The size and financial capability of the data supplier.

#### **R428-2-10. Exemptions and Extensions.**

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the data supplier requests an extension, the data supplier must submit its request no less than seven calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

(a) The data supplier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents as of January 1 of a given year is exempt from all requirements of this title except that once a carrier has covered a cumulative total of 2,500 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

#### **R428-2-11. Contractor Liability.**

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

#### **R428-2-12. Data Supplier Contacts.**

(1) Data suppliers required to submit healthcare claims data or healthcare facility data shall provide current contact information to the Office by September 1 of each year using a web-site provided by the Office for this purpose.

(2) Each data supplier newly required to submit healthcare claims data or healthcare facility data under this rule, including by a change to the rule or because it no longer qualifies for an exemption, shall provide contact information to the Office within 30 days of learning that they will be required to submit data under this rule.

(3) Each data supplier shall designate a person who is responsible for submitting data and a person who is responsible for communicating with the Office regarding the submission of the data. Each data supplier shall notify the Office of changes in this designation within thirty calendar days.

**KEY: health, health policy, health planning**  
**March 25, 2016**  
**Notice of Continuation November 10, 2016**

**26-33a-104**

**R428. Health, Center for Health Data, Health Care Statistics.****R428-5. Appeal and Adjudicative Proceedings.****R428-5-1. Legal Authority.**

The Utah Health Data Committee is given rulemaking authority pursuant to Utah Code Annotated Title 26, Chapter 33a.

**R428-5-2. Purpose.**

The purpose of this rule is to establish procedures used by the Utah Health Data Committee for its adjudicative proceedings.

**R428-5-3. Type of Proceeding.**

The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding is in the public interest and conversion of the proceeding does not unfairly prejudice the rights of any party.

**R428-5-4. Formal Proceedings.**

(1) The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

(2) The content of the notice of committee action shall comply with Subsection 63G-4-201(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

(3) Within 30 calendar days of the mailing (electronic or paper) date of a notice of committee action, the respondent or his representative shall file with the Office and with each person known to have a direct interest a written, signed response that includes:

- (a) the agency's file number or other reference number;
- (b) the name of the adjudicative proceeding;
- (c) a statement of the relief or action sought;
- (d) a statement of the facts;
- (e) a statement summarizing the reasons for granting the relief requested.

(4) A conference may be scheduled by the Director of the Office or the presiding officer to encourage settlement before the hearing.

(5) The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

(6) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

- (a) a statement of the presiding officer's findings of fact;
- (b) a statement of the presiding officer's conclusions of law;
- (c) a statement of the reasons for the presiding officer's decision;
- (d) a statement of any relief ordered by the agency;
- (e) a notice of the right to apply for committee reconsideration;
- (f) a notice of any right to administrative or judicial review available;
- (g) the time limits applicable to any reconsideration or review.

**R428-5-5. Default and Reconsideration.**

(1) The presiding officer may enter an order of default against a party if:

(a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;

(b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(c) a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in Subsection R428-5-4(3).

(d) The order of default shall include a statement of the grounds for default and shall be mailed (electronic or paper) to all parties.

(e) A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

(f) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

(g) In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

(2) Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days after:

(a) the date that an Order of Review is issued in an informal adjudicative proceeding; or

(b) the date that a request for review is denied; or

(c) the date that a final order is issued in a formal adjudicative proceeding.

(d) The request for reconsideration shall be filed with the committee and one copy shall be sent by mail (electronic or paper) to each party by the person making the request.

(e) The committee may issue a written order granting or denying the request within 30 working days of filing of the request.

(f) If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

**R428-5-6. Judicial Review.**

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under Section R428-5-5.

**R428-5-7. Declaratory Orders.**

(1) Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

(a) the specific statute or rule to be reviewed;

(b) the situation or circumstances in which applicability is to be reviewed;

(c) the reason or need for the applicability review;

(d) the name, address, and telephone number where the petitioner can be contacted;

(e) the date of submission and signature of the petitioner.

(2) The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

- (a) the applicability or non-applicability of the specific statute or rule;
- (b) the reasons for the applicability or non-applicability of the specific statute or rule;
- (c) any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

(3) The committee may as appropriate:

- (a) interview the petitioner;
- (b) consult with counsel or the Attorney General;
- (c) take any action the committee in its judgment deems

necessary to provide that the petition receives adequate review and due consideration.

(4) If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

(5) The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

(a) a designation of the statute or rule permitting or requiring review;

- (b) a statement of the issues reviewed;
- (c) findings of fact as to each of the issues reviewed;
- (d) conclusions of law as to each of the issues reviewed;
- (e) the reasons for the disposition;
- (f) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- (g) a notice of any right of further administrative reconsideration or judicial review available; and
- (h) the time limit applicable to any review.

**KEY: health, health policy, health planning  
August 5, 2014**

**26-33a-104**

**Notice of Continuation November 10, 2016**

#### **R428-5-8. Informal Proceedings.**

(1) The committee may convert a formal proceeding to informal as specified under Section R428-5-3. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

(2) The presiding officer may schedule a conference to encourage settlement before issuing a decision.

(3) Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

(4) Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

- (a) the decision;
- (b) the reasons for the decision;
- (c) notice of the right to any administrative or judicial review available;
- (d) the time limits for requesting review.

(5) Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

- (a) be signed by the party requesting review;
- (b) state the grounds for review and the relief requested;
- (c) be dated the date of mailing; and
- (d) be sent by mail (electronic or paper) to the presiding officer and to each party of the proceeding.

(6) Within 15 calendar days of the mailing (electronic or paper) of the request for review, any party may file a response with the committee. A copy of the response must also be mailed (electronic or paper) to the presiding officer and each of the parties.

(7) The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

(8) If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

(9) Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

**R428. Health, Center for Health Data, Health Care Statistics.****R428-10. Health Data Authority Healthcare Facility Data Reporting Rule.****R428-10-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in section R428-1.

**R428-10-2. Purpose.**

This rule establishes requirements for healthcare facilities to submit data to the Utah Department of Health.

**R428-10-3. Coordination of Rules.**

The Office will use data collected in this section to develop and maintain a statewide Healthcare Facility Database. Upon receipt of emergency room data, the Office shall provide a copy of the emergency room data to the Bureau of Emergency Medical Services and Preparedness for use as described in R426.

**R428-10-4. Data Reporting.**

(1) Healthcare facilities shall submit ambulatory surgery data to the Office. In addition, hospitals shall submit discharge data and emergency data to the Office.

(2) Healthcare facilities shall submit healthcare facility data to the Office in accordance with the Utah Healthcare Facility Data Submission Guide.

(3) Healthcare facilities shall submit data for all fields required in this section if the data are available. Healthcare facilities shall notify the Office or its designee of any data elements or fields required to be reported under this rule, but are not available to the healthcare facility.

(4)(a) Healthcare facilities shall submit healthcare facility data to the Office or its designee according to the schedule in the Utah Healthcare Facility Data Submission Guide.

(b) The Director of the Office may approve an alternate submission date as long as it meets the needs of the committee.

(5) Healthcare facilities shall submit healthcare facility data by a secure method according to the Utah Healthcare Facility Data Submission Guide.

(6) The Office or its designee may conduct on-site audits to verify the accuracy and completeness of all submittals.

**KEY: health, health data, health planning, hospital policy**  
**March 25, 2016 26-33a-104**  
**Notice of Continuation November 10, 2016 26-33a-108**

**R428. Health, Center for Health Data, Health Care Statistics.****R428-12. Health Data Authority Survey of Enrollees in Health Plans.****R428-12-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a and in accordance with the Utah Health Plan Performance Measurement Plan.

**R428-12-2. Purpose.**

This rule establishes the process for the collection of enrollee satisfaction data from Utah carriers that are needed to promote informed consumer choice in plan selection and measure the quality of care provided to enrollees of Utah carriers.

**R428-12-3. Submission of Satisfaction Data.**

(1) Each carrier covered by the scope determined in subsection R428-12-5 shall compile and submit enrollee satisfaction (Consumer Assessment of Healthcare Providers and Systems survey or CAHPS) data to the Office according to this rule.

(2) By January 1 of each year, each carrier shall submit to the Office a plan for creating and providing CAHPS data for the preceding calendar year. For each required survey, the plan must clearly indicate whether the carrier will use the Office's contracted vendor or whether the carrier will contract with a survey agency on their own.

(3) By July 1 of each year, each carrier shall submit to the Office CAHPS data for the preceding calendar year, unless an alternate timeframe has been determined under subsection R428-12-5, in which case the carrier shall submit the data by the alternate due date.

**R428-12-4. Sampling Frame Submission.**

(1) The sources for enrollment data are Utah carriers. Each carrier shall include in the sampling frame all eligible enrollees.

(2) Each carrier shall create the sampling frame according to the criteria outlined in the NCQA Survey Specifications.

(3) The sampling frame and procedures used by the reporting carrier are subject to audit by the Office of Health Care Statistics.

(4) The carrier shall copy the sampling frame using an electronic medium acceptable to the survey agency and then send to the survey agency.

(5) The carrier shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the electronic sample file. Each carrier shall submit to the survey agency the sampling frame for each of its products no later than four weeks after the receipt of the sampling memo from the survey agency.

**R428-12-5. Administration of Survey.**

Each year, the Utah Department of Health, in consultation with carriers, will determine the target survey population, survey timeframes, and the scope of the survey.

**KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization**

November 21, 2016

26-33a-104

Notice of Continuation November 10, 2016

26-33a-108

**R477. Human Resource Management, Administration.****R477-101. Administrative Law Judge Conduct Committee.****R477-101-1. Authority and Purpose.**

This rule is enacted pursuant to Utah Code Section 67-19e-104, requiring the Department of Human Resource Management to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

**R477-101-2. Definitions.**

In addition to the terms defined in Utah Code Section 67-19e-102:

(1) "Administrative Law Judge" (ALJ) includes Hearing Officers employed or contracted by a state agency that meet the criteria described in Utah Code Section 67-19e-102(1)(a).

(2) "Chair" means the Executive Director, Department of Human Resource Management, or designee.

(3) "Code of Conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in Utah Code Section 67-19e-108.

(5) "Committee Meeting" means a proceeding at which a Complaint is presented to the Committee by the investigator. Respondent ALJ shall also have the opportunity to appear and speak regarding the Complaint and its allegations.

(6) "Complaint" means a written document filed with the Department pursuant to Utah Administrative Code R477-101-401 alleging Misconduct by an ALJ.

(7) "Department" means the Department of Human Resource Management.

(8) "Final Agency Action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.

(9) "Full investigation" means that portion of an investigation where the Respondent ALJ may respond, in writing, to specific allegations identified in a Complaint. A Full Investigation may also include, but is not limited to: examination by the Investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, Respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides responsible basis for action or a decision.

(11) "Interested Party" means an individual or entity who participated in an event or proceeding giving rise to a Complaint against the Respondent ALJ.

(12) "Investigator" means a person employed by the department to perform investigations mandated under Utah Code Section 67-19e-107 and present information at the Committee Meeting.

(13) "Misconduct" means a violation of the Code of Conduct or Utah Code Section 67-19e-101 et seq.

(14) "Preliminary Investigation" means that portion of an investigation conducted by the Department upon receipt of a Complaint. A Preliminary Investigation may include, but is not limited to: examination of documents, correspondence, interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a Complaint is filed.

**R477-101-3. Jurisdiction.**

(1) Administrative Law Judges. The Committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding Complaints filed against ALJs.

(2) Former ALJs. The Committee has continuing jurisdiction over former ALJs regarding allegations that Misconduct occurred during service as an ALJ if a Complaint is received before the ALJ's appointment concludes.

**R477-101-4. Records Classification and Retention.**

(1) Records prepared by and for the Committee, including all Complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Utah Code Section 63G-2-305.

(2) Committee records shall be maintained by the department for a period of three years following the conclusion of any Committee activity.

**R477-101-5. Committee.**

(1) The Executive Director or designee shall serve as Chair of the Committee, and appoint four Executive Directors or their designees to serve on the Committee.

(2) Only Executive Directors of agencies that employ or contract with ALJs may serve on the Committee.

(3) If a Department investigation establishes a Complaint requires further action, the Executive Director and Chair shall convene the Committee.

(4) An Executive Director of the agency that employs or contracts with the Respondent ALJ may not participate in a Committee proceeding involving the Respondent ALJ.

(5) After convening the Committee, the Department shall provide a copy of the Complaint and its investigative results to the Committee and the Respondent ALJ.

(6) Within 30 days of the date the Committee is convened on a complaint the Committee shall schedule a Committee Meeting. At the Committee Meeting the Respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a Complaint.

(7) Committee members may attend Committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the Chair.

(8) After consideration of all information provided at the Committee Meeting, the Committee shall dispose of the Complaint by issuing a decision or report with a recommendation to the agency containing:

(a) a brief description of the Complaint and the investigative results;

(b) findings, and;

(c) recommendations.

(9) Committee members shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

**R477-101-6. Duties of the Chair.**

(1) The Chair shall:

(a) receive, acknowledge receipt of and review Complaints;

(b) notify complainants about the status and disposition of their Complaints,

(c) make recommendations to the Committee regarding further proceedings or the disposition of a Complaint;

(d) stay investigation(s) or committee proceedings pending Final Agency Action of the matter giving rise to the Complaint against the Respondent ALJ;

(e) maintain records of the Committee's operations and actions;

(f) compile data to aid in the administration of the Committee's operations and actions;

(g) prepare and distribute an annual report of the Committee's operations and actions;

(h) direct the operations of the Committee's office, and supervise other members of the Committee's staff;

(i) make available to the public the laws, rules, and procedures of the Committee and its operations;

(j) consider requests for extension of time periods and, upon a showing of Good Cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the Chair may delegate any of the foregoing duties to other members of the Committee's staff.

**R477-101-7. Code of Conduct.**

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) In order to suit a specific agency need, an agency may make an addendum or modification to the Code of Conduct. Any such addendum or modification shall be specific to their agency. In addition, any addendum or modification to the Code of Conduct must be reviewed and approved by the Committee before being implemented. The Committee may be convened for the purpose of reviewing any proposed addendum or modification.

**R477-101-8. Filing Procedure.**

(1) Each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily available to parties, at the commencement of administrative proceedings.

(2) An individual who alleges a violation of the Code of Conduct or otherwise has a Complaint against an ALJ may file a timely Complaint with the Department. To be timely a Complaint must be in writing and filed with the Department within 20 working days of Final Administrative Action in the matter in which the individual is an Interested Party.

(3) Complaints filed with the Department are deemed filed on the date actually received by the Department. The Department shall date-stamp all Complaints on the date received. All filing and other time periods are based upon the Department's working days.

(4) Complaints must contain specific facts and allegations of Misconduct and must be signed by the person filing the Complaint or by the person's authorized representative. Complaints shall also contain the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if a party or person is being represented.

(5) The Department will give written notice to both the complainant and Respondent ALJ when a Complaint is received.

**R477-101-9. Investigation.**

(1) Preliminary Investigation.

(a) The Department shall review all timely filed Complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a Preliminary Investigation.

(b) If the Preliminary Investigation determines that the Complaint is untimely, frivolous, without merit of, or if the Complaint merely indicates disagreement with the Respondent ALJ's decision, without further alleged Misconduct, the Complaint may be similarly dismissed without further action.

(c) If, after a Preliminary Investigation is completed, there is a reasonable basis to find Misconduct occurred, the Investigator shall initiate a Full Investigation.

(2) Full Investigation.

Within ten days after a determination to conduct a Full Investigation is made, the Investigator shall notify the Respondent ALJ that a Full Investigation is being conducted. The notice shall:

(a) inform the Respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;

(b) inform the Respondent ALJ that the investigation may be expanded if appropriate;

(c) invite the Respondent ALJ to respond to the Complaint in writing within 10 working days;

(d) include a copy of the Complaint, the Preliminary Investigation report(s), and any other documentation reviewed in determining whether to authorize a Full Investigation; and

(e) unless continued by the Chair, Full Investigations shall be completed within three months of the determination to conduct a Full Investigation.

**R477-101-10. Full Investigative Findings.**

Results of the investigation shall be provided to the Chair, who shall determine whether to convene a Committee Meeting.

**R477-101-11. Notice.**

(1) If after review of the Full Investigative result and findings the Chair determines the Complaint is factually or legally insufficient to establish Misconduct, the Chair shall similarly dismiss the Complaint and take no further action.

(2) If after review of the Full Investigative result and findings the Chair determines the Complaint requires further action, the Chair shall convene the Committee and order a Committee Meeting be scheduled.

(3) After convening the Committee the Chair shall provide Respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the Committee Meeting. The Chair shall also provide the Respondent ALJ with a copy of the Complaint and the results of the Department's investigation.

(4) Notice that a Committee has been convened and a Committee Meeting ordered shall be made by personal service or certified mail upon the Respondent ALJ or the Respondent ALJ's representative. Service of all other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the Chair that a Committee has been convened the Respondent ALJ may provide the Committee a written response to the Complaint.

(6) After receipt of the Respondent ALJ's response of after expiration of the time to respond the Committee shall, in consultation with the ALJ, schedule a Committee Meeting. The Committee shall notify the ALJ in writing of the date, time, and place of the Committee Meeting. Unless continued for Good Cause, Committee Meetings shall be held within four months of the date a Committee is convened on a Complaint.

(7) No later than 20 days before the scheduled Committee Meeting the Chair shall provide the Respondent ALJ with copies of all documents proposed for use at the Committee Meeting or to be relied upon in making its report and recommendation.

(8) Respondent ALJ shall be entitled to representation at every stage of the Committee proceedings or the Committee Meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in Committee proceedings.

**R477-101-12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.**

If the Respondent ALJ resigns or retires during the proceedings, the Committee shall determine whether to proceed or dismiss the proceedings.

**R477-101-13. Committee Meetings.**

(1) The Chair shall rule on all motions or objections raised during a Committee Meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The Chair may limit the time allowed for

the presentation of information, may bifurcate any and all issues to be considered, and may make any and all other rulings regarding any Committee proceeding or Committee Meeting.

(2) To hold a Committee Meeting there must be at least 3 members of the Committee present.

(3) The Respondent ALJ shall be permitted to present information to, make statements and produce witnesses for the Committee's consideration.

(4) Committee members may ask questions of any witness including the Respondent ALJ.

(5) Immediately following the conclusion of the Committee Meeting, the Committee shall deliberate and decide whether there is sufficient evidence the Respondent ALJ violated the Code of Conduct or otherwise engaged in Misconduct. Any such decision shall require a majority vote of the participating Committee members.

(6) Committee decisions shall be supported by a preponderance of the evidence.

(7) Within 30 days of the conclusion of the Committee Meeting, the Chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action(s), and shall forward the decision and recommendation to the Respondent ALJ and the agency head of the Respondent ALJ.

(8) After deliberation, if the Committee finds insufficient evidence or reason to determine Misconduct occurred, the complaint shall be dismissed.

#### **R477-101-14. Discipline.**

(1) At any time after the commencement of a Full Investigation and before any Committee action, the ALJ may admit to any or all of the allegations in exchange for a stated sanction. The admission shall be submitted to the Committee for a recommendation.

(2) Any corrective and/or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or state rule(s) governing discipline.

#### **R477-101-15. Reinstatement of Proceedings.**

(1) Reinstatement upon Request by Complainant.

(a) If a Complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

(c) A determination not to reinstate the Complaint is not reviewable.

(2) Reinstatement by the Chair.

(a) If the Committee dismisses a Complaint, the Chair may, at any time upon the receipt of newly discovered evidence, request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which the reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

#### **R477-101-16. Performance Standard.**

(1) The following minimum performance standards shall apply to all ALJ's:

(a) The ALJ shall have no more than one agency disciplinary action or one Committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) The ALJ shall receive an average score of no less than

65% on each survey category as provided in Utah Code 67-19e-106.

(2) For any question that does not use the numerical scale, the Committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by Utah Code Section 67-19e-105.

#### **R477-101-17. Performance Surveys.**

(1) Initial performance surveys shall be conducted by the department beginning January 1, 2014, based on current ALJ's assignment effective date. Current ALJ's will be divided into four approximately equal groups based on length of tenure in the ALJ position. The most tenured group will be surveyed first, with the next tenured group being surveyed beginning January 1 of the following calendar year, until the four-year survey cycle is established.

(2) Survey respondents may include:

(a) Attorneys who have appeared before the administrative law judge as counsel in the proceeding;

(b) Staff who have worked with the administrative law judge; and

(c) Any other person that has appeared on record before the administrative law judge, including but not limited to pro se parties and witnesses, in the proceeding.

(3) Survey results shall be maintained by the department and shall not be maintained in the ALJ's personnel file.

(4) Survey results shall be made available to the ALJ's supervisor for consideration in completing annual performance evaluations.

#### **R477-101-18. Training.**

(1) The department shall provide an annual webcast on the topic of procedural fairness for administrative law judges. The content of the webcast shall comply with the provisions and requirements set forth in Utah Code 67-19e-110.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the department under this section, the administrative law judge shall complete the procedural fairness training program established by the department.

**KEY: administrative law judges, conduct committee  
November 7, 2016 67-19e-101 through 67-19e-109**

**R523. Human Services, Substance Abuse and Mental Health.****R523-11. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders.****R523-11-1. Purpose and Statutory Authority.**

(1) Purpose. This rule prescribes standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-502, 41-6a-510, 41-6a-528, and 73-18-12.

(2) Statutory Authority. This rule is promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501 through 503 and 76-5-207.

(3) Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the participant examine the behavior that led to the arrest, (b) assist the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon the participant the severity of the DUI offense.

**R523-11-2. Definitions.**

(1) "DUI Educational Program" herein referred to as "Program" is an instructional series offered by a licensed substance abuse treatment Provider agency which satisfies the standards established by the Division.

(2) "Provider" is a licensed substance abuse treatment agency that has been approved to offer DUI Education.

(3) "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

(4) "Certificate" is a written authorization issued by the Division to indicate that the Provider agency has been found to be in compliance with these Division standards and may offer DUI Education.

(5) "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for education or additional assessment.

(6) "Instructor" is a person employed by a Provider who has been certified to instruct the state approved education course for a court-referred participant.

(7) "Participant" is a person attending DUI Education classes as a result of a DUI conviction or arrest. This person has received a screening which indicated education is appropriate.

(8) "Victim Impact Panel". A presentation designed to reflect the principles taught in the educational program that helps participants understand the potential impact on others of driving under the influence.

**R523-11-3. Certification Requirements for DUI Educational Providers.**

(1) In order to operate, a potential DUI Educational Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

(2) Application for certification shall require the following:

(a) A brief description and purpose of the agency, and an explanation of the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse

Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

(b) The geographical area to be served;

(c) The ownership and person or group responsible for agency operation;

(d) The location and time that DUI classes would normally be held;

(e) A list of instructors employed by the agency; and

(f) A copy of the agency substance abuse treatment license.

(g) An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

(3) A DUI Educational Provider shall also:

(a) Ensure that each participant receive no less than 16 hours of face-to-face instruction using the Division approved curriculum with no more than 8 hours of instruction occurring in any calendar day;

(b) Allow no more than 25 persons, including participant and others to a class;

(c) Follow the recommendations of the screening which has been provided;

(d) Ensure that screenings are conducted by staff from a licensed treatment agency who have been trained in administering the screening tool;

(e) Report the number of participants completing the DUI Educational Program to the Division at least every quarter;

(f) Have policies ensuring confidentiality of information maintained on each participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Subchapter A Part 2;

(g) Ensure that Instructors follow the Division-approved curriculum;

(h) Have available for review a copy of the Provider's charter, constitution, or bylaws;

(i) Outline the eligibility criteria for admission to the program, including the screening tool used;

(j) Ensure that all Instructors employed by the Provider are certified to teach;

(k) Inform the Division of any licensing or address change;

(l) Comply with all applicable local, state and federal laws and regulations.

(m) Ensure that none of the Instructors are on probation or parole for any offense;

(n) Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years;

(o) Notify the Division in writing within 30 days if any Instructor has been arrested for any reason;

(p) Provide separate classes for participants who are younger than 18 years of age at the completion of the course; and

(4) Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants.

(4) A participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by a screening and assessment.

(5) The Division shall issue the Provider a certificate after determination has been made that the agency is in compliance with these standards.

(6) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

**R523-11-4. On-site Survey of Provider.**

(1) After a review of the application, a site review may be scheduled by a designated representative of the Division. With each application the applicant agrees, as a condition of Provider certification, to permit representative(s) of the Division and/or

others authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff and class participants to determine compliance with applicable laws.

(2) The DUI Educational Provider also agrees to allow representatives from the Division and others authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) Review Procedures. Within 30 days after completion of an on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

#### **R523-11-5. Instructor Certification.**

(1) By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

(a) All Instructors employed by any DUI Educational Provider shall be certified to teach prior to instructing the state approved DUI curriculum for any DUI Educational Provider.

(b) All Instructors shall attend and complete the requirements of the Instructor training authorized by the Division.

(c) Requirements in R523-11-5(a) and (b) above shall be complete and verifiable.

(d) The Instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a DUI Educational Program.

(e) The Instructor agrees to attend all required DUI training sessions sponsored or approved by the Division.

(f) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(g) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(h) An Instructor shall notify the Division within 30 days of any arrest.

#### **R523-11-6. Recertification of Instructors.**

(1) An Instructor must recertify every twenty-four months by: attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The Instructor shall sign a register at those training sessions which have been set aside for DUI Instructor recertification.

(2) It is the responsibility of the Instructor to notify the Division immediately of any address change.

(3) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(4) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(5) If a current Instructor is arrested, he or she has 30 days to report the arrest to the Division.

(6) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

#### **R523-11-7. Corrective Action for a Provider or an Instructor.**

(1) If the Division becomes aware that a DUI education Provider or an Instructor is in violation of these standards, it shall proceed with the following steps:

(a) Within 30 days of becoming aware of the violation, the Division shall notify the Provider or the Instructor in writing of the area(s) of noncompliance.

(b) Within 30 days of receiving notification of violation, the program or the Instructor shall submit a written plan to the Division for achieving compliance.

(c) If the written plan is not accepted as satisfactory by the

Division within 30 days the Provider or the Instructor shall be notified that they have been suspended.

(d) A Provider or an Instructor must cease conducting any DUI Educational Provider until the suspension is lifted.

(e) If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the Provider or Instructor's certification.

#### **R523-11-8. Revocation of a Provider's or an Instructor's Certification.**

(1) The Division shall revoke the certification of a Provider or an Instructor for the following reasons:

(a) If the Provider or the Instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

(b) If the Provider or the Instructor continues to provide any DUI Education during the period of suspension, or

(c) If any Provider or Instructor receives more than two notices of noncompliance with these standards in a one-year period.

(2) If any Provider or Instructor's certification is revoked, they may not reapply for recertification for a period of twelve months.

#### **R523-11-9. Redress Procedures for Programs or Instructors.**

(1) Any Provider or Instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the Provider or the Instructor in writing of the decision as required under Section 63G-4-302 and R497-100-1 through R497-100-10.

(2) If they so choose, the Provider or the Instructor may appeal in writing the decision of the Division Director or designee by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under Section 63G-4-302.

#### **R523-11-10. Standards for Victim Impact Panels.**

(1) Victim impact panels may be conducted in person or by use of filmed versions approved by the Division.

(2) Providers shall ensure that victim impact panels are available in English, Spanish and other languages as needed.

(3) Providers shall limit attendance at victim impact panels to no more than 25 participants.

#### **KEY: DUI programs, certification of instructors**

<b>November 7, 2016</b>	<b>17-43-201</b>
	<b>41-6a-502</b>
	<b>41-6a-510</b>
	<b>41-6a-528</b>
	<b>62A-15-103</b>
	<b>62A-15-105</b>
	<b>62A-15-501 through 503</b>
	<b>63G-4-302</b>
	<b>73-18-12</b>
	<b>76-5-207</b>
	<b>42 CFR Chapter 1 Subchapter A Part 2</b>

**R549. Human Services, Public Guardian (Office of).****R549-1. Eligibility and Services Priority.****R549-1-1. Purpose.**

(1) The purpose of this rule is to provide:

(a) Procedures and standards for the determination of eligibility and establish services as required by Title 62A, Chapter 14, Part-1, Utah Code.

**R549-1-2. Authority.**

(1) This rule is authorized pursuant to UCA 62A-14-105(2).

**R549-1-3. Definitions.**

(1) Terms used in this rule are defined in Section 62A-14-102.

**R549-1-4. Eligibility.**

(1) Individuals who have been found or are likely to be found legally incapacitated and in need of guardianship and/or conservatorship, and who have no other responsible, willing and able person to serve as their guardian, may be eligible for the services provided by Human Services, Office of Public Guardian "Office".

**R549-1-5. Priority.**

(1) The Office will give priority to incapacitated individuals whose need for guardianship and/or conservatorship is more critical than other incapacitated individuals, as follows and in the following order:

(a) Individuals who are in life-threatening situations, where immediate guardianship assistance or intervention is necessary for the preservation of life or the prevention of serious harm or injury.

(b) Individuals who are experiencing abuse, neglect or self-neglect or financial exploitation.

(c) Individuals who are at significant risk of experiencing abuse, neglect or self-neglect or financial exploitation.

**KEY: eligibility and priority, incapacitated, guardianship  
July 9, 2007 62A-14-101 et seq.  
Notice of Continuation November 28, 2016**

**R590. Insurance, Administration.****R590-91. Credit Life Insurance and Credit Accident and Health Insurance.****R590-91-1. Purpose and Authority.**

The purpose of this rule is to protect the interests of debtors and the public in this State and to ensure a fair and equitable credit insurance market by establishing a system of reasonable rating, policy form, and operating standards for the transaction of credit life insurance and credit accident and health insurance. This rule is promulgated pursuant to Section 31A-2-201.

**R590-91-2. Definitions.**

As used in this rule:

A. "Credit Accident and Health Insurance" means insurance as defined in Section 31A-22-802.

B. "Credit Insurance" means both credit life insurance and credit accident and health insurance.

C. "Credit Life Insurance" means insurance as defined in Section 31A-22-802.

D. "Indebtedness" means indebtedness as defined in Section 31A-22-802.

E. "Net Indebtedness" means net indebtedness as defined in Section 31A-22-802.

F. "Net Written Premium" means premium as defined in Section 31A-22-802.

G. "Open-End Credit" means credit extended by a creditor under an agreement in which the creditor reasonably contemplates repeated transactions; the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and the amount of credit available to the debtor is self-replenishing as the debtor repays amounts previously drawn.

**R590-91-3. Rights and Treatment of Debtors.**

A. Multiple Plans of Insurance. If a creditor makes available to the debtor more than one plan of credit life insurance or more than one plan of credit accident and health insurance, the debtor must be informed of the plans applicable to the specific loan transaction.

B. Substitution. If a creditor requires insurance, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this State. If this subsection is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

C. Evidence of Coverage.

(1) All credit insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance.

(a) The individual policy or certificate of insurance shall be delivered to the debtor in accordance with Section 31A-22-806(3) and 70C-6-104. The insurer shall promptly notify the debtor of any delay in providing the insurance.

(b) If the named insurer does not accept the risk, the insurer, if any, shall notify the debtor of the failure to provide the insurance. A substituted insurer, if any, shall deliver the policy or certificate in accordance with Section 31A-22-806(5).

(c) Subsequent certificates are not needed on open-end credit arrangements after the initial indebtedness.

(2) Each individual policy or certificate of insurance shall provide the information required by Section 31A-22-806.

(3) Each policy application must provide the information required by Section 31A-22-806(4)(b) and identify the agent, if any.

D. Claims Processing. All credit insurance claims shall be processed in accordance with Section 31A-26-302.

E. Termination of Group Credit Insurance Policy.

(1) If a debtor is covered by a group credit insurance

policy providing for the payment of single premiums to the insurer, then provisions shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which the single premium has been paid.

(2) If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy, for whatever reason, termination notice shall be given to the insured debtor at least 30 days prior to the effective date of termination, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this paragraph shall be given by the insurer or, at the option of the insurer, by the creditor.

F. Interest on Premium. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on the insurance charges or premiums, the creditor must remit and the insurer shall collect the premium within 60 days after it is added to the indebtedness.

G. Renewal or Refinancing of Indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited promptly to the debtor as provided in Section 8.

H. Maximum Aggregate Provisions. A provision in an individual policy or certificate that sets a maximum limit on total payments must apply only to that individual policy or certificate.

I. Voluntary Prepayment of Indebtedness. If a debtor prepays his indebtedness other than as a result of his death or through a lump sum accident and health payment:

(1) Any credit life insurance covering indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be paid to the debtor in accordance with Section 8; and

(2) Any credit accident and health insurance covering indebtedness shall be terminated and an appropriate refund of the credit accident and health insurance premium shall be paid to the debtor in accordance with Section 8. If a claim under this coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit disability benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

J. Involuntary Prepayment of Indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor if living or to the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

(1) In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit accident and health insurance premium in accordance with Section 8;

(2) In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium in accordance with Section 8;

(3) In either case, the amount of the benefits in excess of the amount required to repay the indebtedness after crediting any unearned interest or finance charges.

K. Amounts to be Insured:

(1) Credit life insurance benefits shall be consistent with the premium charge.

The initial amount of credit life insurance may not exceed the total amount payable under the contract of indebtedness. Credit life insurance may provide benefits in amounts which do not exceed, but may be less than, the scheduled amount of indebtedness, including unearned interest or finance charges, or the actual amount of unpaid indebtedness, whichever is greater. Credit life insurance on preauthorized lines of credit not exceeding the commitment period may be written for the preauthorized amount on a nondecreasing or level term plan. The death benefit amount shall be that amount for which premiums are paid. Whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(2) The total amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, may not exceed, but may be less than the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each periodic indemnity payment may not exceed the total amount payable under the contract of indebtedness divided by the number of periodic installments.

L. Dividends on participating individual policies of credit insurance shall be payable to the individual insureds.

**R590-91-4. Policy Forms, Filing and Reserves.**

A. Permissible Forms. Credit life insurance and credit accident and health insurance shall be issued only in the forms defined in Section 31A-22-803.

B. Filing Requirements.

(1) All policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders to be delivered or issued for delivery in this State shall be filed with the commissioner as required by Sections 31A-21-201, 31A-22-807, and 31A-22-808.

(2) An actuarial memorandum, signed and dated, must be included in each rate and form filing. The memorandum must identify the following:

(a) types of coverage: gross, net, decreasing, level, single life, joint life, full term or truncated;

(b) types of loans to be insured: open-end, closed end;

(c) durations of the loans and durations of the coverage.

Refer to Section 31A-22-801(2)(a);

(d) methods of premium charge: single premium or monthly outstanding balance;

(e) schedules of premium rates and formulas for each type of coverage;

(f) methods of refund calculation and formulas for each type of coverage; and

(g) reserve bases.

(3) All filings are subject to the general filing requirements of the Utah Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings, Rule R590-228. The commissioner may prohibit a form if the benefits provided are not reasonable in relation to the premium charged.

C. The minimum reserve basis for credit life insurance issued to be effective prior to January 1, 2008 shall be the 1980 Commissioner's Standard Ordinary Table (1980 CSO) with interest at 5-1/2% per annum.

D. The minimum reserve basis for active lives on credit accident and health insurance issued to be effective prior to January 1, 2008 shall be the amount of the premium refund available to the insured.

E. The minimum reserve basis for disabled lives on credit

accident and health insurance issued to be effective prior to January 1, 2008 shall be the 1987 Commissioner's Group Disability Table (1987 CGDT) with interest at 5-1/2% per annum.

**R590-91-5. Reasonableness of Benefits in Relation to Premium.**

A. General Standard. Under Section 31A-22-807, benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is deemed to be satisfied if the premium rate charged develops or may be reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 55% for credit accident and health insurance.

B. Nonstandard Coverage. If any insurer files for approval of any form providing coverage different from that described in Sections 6 and 7, the insurer shall demonstrate to the satisfaction of the commissioner that the premium rates to be charged for the coverage will develop or may be reasonably expected to develop a loss ratio not less than that contemplated for standard coverage at the premium rates described in these sections.

C. Coverage Without Separate Charge. If no specific charge is made to the debtor for credit insurance, the standards of Subsection A above and the deviation standards of Section 11 are not required to be used. For purposes of this subsection, it will be considered that the debtor is charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, or if there is a differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status. Any such charge which exceeds the premium rate standards set out in Sections 6 and 7 as adjusted pursuant to Section 9 must be filed with the commissioner.

**R590-91-6. Credit Life Insurance Prima Facie Rates.**

A. Premium Rate. Credit life insurance prima facie premium rates for the insured portion of an indebtedness payable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), and (5) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) Outstanding balance: \$0.65 per month per \$1,000 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis;

(2) Single Premium Decreasing Term: If premiums are payable on a single premium basis, the following formula shall be used to develop single premium rates from the outstanding balance rate:

$Sp = (N + 1)/20 (Op)$  where  $Sp$  is the single term premium per \$100 of initial insured indebtedness,  $N$  is the credit term in months, and  $Op$  is the monthly outstanding balance rate per \$1,000 of outstanding insured indebtedness.

(3) Single Premium - Level Term: If premiums are payable on a single premium basis when the benefit provided is level term, the following formula shall be used to develop single premium rates from the outstanding balance rate:

$Sp = N/10 (Op)$  where  $Sp$  is the single term premium per \$100 of initial insured indebtedness,  $N$  is the credit term in months, and  $Op$  is the monthly outstanding balance rate per \$1,000 of outstanding insured indebtedness.

(4) Joint coverage rate on basis (1), (2), or (3) of Subsection A may be no greater than one hundred and seventy percent (170%) of the specific rate for that type of coverage.

(5) A combination of the appropriate rate for level term and the appropriate rate for decreasing term, with equal decrements, shall be used, if coverage provided is a combination of level term and decreasing term, with equal decrements.

(6) If the benefits provided are other than those described in Subsection A above, rates for these benefits shall be actuarially consistent with the rates provided in Paragraphs (1), (2), and (3).

B. The premium rates in Subsection A shall apply to all policies providing credit life insurance, to be issued either with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No exclusions other than suicide within one year of the incurred indebtedness;

(2) Either no age restrictions or age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors having attained age 66 or over on the maturity date of the indebtedness; and

(3) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

(4) On insurance written in connection with open-end credit plans where the amount of insurance is based on or limited to the outstanding unpaid balance, no provision excluding or denying a claim for death resulting from a preexisting condition except for those conditions for which the insured debtor received medical diagnosis or treatment within six months preceding the effective date of coverage and which caused or substantially contributed to the death of the insured debtor within six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a subsequent advance or increase to the outstanding balance is the date on which the advance or increase is posted to the plan account. Such preexisting condition exclusion shall apply to the initial indebtedness and all subsequent advances on an individual basis, only where evidence of individual insurability has not been required.

#### **R590-91-7. Credit Accident and Health Insurance Prima Facie Rates.**

A. Premium Rate. Credit accident and health insurance prima facie premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), (5), and (7) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) If premiums are payable on a single-premium basis for the duration of the coverage, the premiums shall be as indicated on the attached chart which is available from the Insurance Department.

(2) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the following formula, or according to a formula approved by the commissioner which produces rates actuarially equivalent to the single premium rates in Table I:

$$OPn = 20/n+1 (SPn)$$

where SPn = Single Premium Rate per \$100 of initial insured indebtedness repayable in n equal monthly installments;

OPn = Monthly Outstanding Balance Premium Rate per \$1,000;

n = Original payment period, in months.

(3) The actuarial equivalent of paragraphs (1) and (2) shall be used if the coverage provided is a constant maximum

indemnity for a given period of time.

(4) An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in equal amounts per month shall be used if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in equal amounts per month.

(5) If the benefits provided are other than those described above, rates for these benefits shall be actuarially consistent with rates provided in Paragraphs (1), (2), (3), and (4).

(6) The outstanding balance rate for credit accident and health insurance may be either a term specified rate or may be a single composite term outstanding balance rate applicable to all loans made under an open-end credit plan.

(7)(a) For an open-end credit plan, the monthly rate per \$1,000 of outstanding principal balance shall be the rate calculated using the formula in paragraph (2) where n is the number of monthly indemnity payments required to completely extinguish the debt. The rate shall be further reduced to appropriately account for critical period if applicable.

(b) The critical period factors shall be filed with the department and shall not exceed the factors based on the 1968 Credit A and H Two Composite Tables published by the NAIC (Proceedings - 1968 Vol. II).

B. The premium rates in Subsection A shall apply to all policies providing credit accident and health insurance, to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis, or treatment within six months preceding the effective date of the debtor's coverage and which caused loss within the six months following the effective date of coverage.

(2) No other provision which excludes or restricts liability in the event of disability caused in a specified manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries.

(3) No actively at work test may require that the debtor be employed more than 30 hours per week.

(4) No age restrictions or only age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors who will have attained age 66 or over on the maturity date of the indebtedness.

(5) A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy for the indebtedness.

(6) A definition of disability, which is no more restrictive than one requiring that during the first 12 months of disability the insured shall be unable to perform the principal duties of his occupation at the time the disability occurred, and thereafter unable to perform the principal duties of any occupation for which the insured is reasonably fitted by education, training, or experience. This paragraph may not apply to lump sum disability coverage.

(7) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

#### **R590-91-8. Refund Formulas.**

A. Refund formulas which any insurer desires to use must be filed with and approved by the commissioner prior to use. Refund formulas used must develop refunds which are at least as favorable to the debtor as the following methods which are deemed the minimum requirements for the plans described.

(1) Pro Rata Method. The pro rata unearned gross

premium method shall be deemed to produce the minimum refund amount to be used for level term credit insurance, and for credit insurance coverages under which premiums are collected from the debtor on a basis other than the single premium basis.

Refund =  $t/n$  (original gross single premium) where  $t$  = the number of remaining months;

$n$  = the original loan term in months.

(2) Rule of 78 method. The Rule of 78 or sum of the digits unearned premium method shall be deemed to produce the minimum refund amount to be used for insurance coverage which reduces in equal amounts per month and for which the premiums are collected on a single premium basis.

Refund =  $(t(t+1)/n(n+1))$  (original gross single premium) where  $t$  = the number of remaining months;  $n$  = the original loan term in months.

(3) Combination Methods. An appropriate combination of the pro rata method and the Rule of 78 method or, at the option of the insurer, the pro rata method shall be used for credit life insurance provided as a combination of level and decreasing term coverage and for credit accident and health insurance wherein the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in equal amounts per month.

B. For net indebtedness insurance and for other types of insurance and other modes of premium payment, each insurer shall file for approval and include in the policy appropriate formulas and/or factors for refunds, or reference to such formulas and factors that are on file with the commissioner. For net indebtedness, either the actuarial method also known as the U.S. Rule or pure premium method, or an arithmetic average of refunds due under Pro-Rata and Rule of 78 Methods will be acceptable.

C. In the event of termination, no charge for credit insurance may be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month, unless refunds are made on a pro rata basis for each day within the loan month.

D. If the total of all refunds due a debtor (or joint debtors) is less than \$5.00, no refund need be made.

#### **R590-91-9. Experience Reports and Adjustment of Prima Facie Rates.**

A. Each insurer doing Credit Insurance business in this state shall annually file with the commissioner and the NAIC Support and Services Office a report of credit life insurance and credit accident and health business written on a calendar year basis. Each insurer shall utilize the Credit Insurance Experience Exhibit as approved by the National Association of Insurance Commissioners. The report shall contain data separately for this state. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

B. Whenever deemed necessary, the commissioner will publish by order, after a hearing, Prima Facie Rates before September 1. The new prima facie rates shall be effective January 1 of the following year.

#### **R590-91-10. Rating Standards - Filing Requirements.**

A. Requirement to File the Four Year Loss Ratio Test.

(1) Insurers with more than \$250,000 of credit insurance premium earned in Utah in the most recent four year period shall annually file an experience report to determine whether benefits are reasonable in relation to premiums based on the loss ratio test in Section 31A-22-807(4). The loss ratio shall be calculated at the rates actually used in each year. The insurer may also file an adjusted loss ratio report that adjusts premium to the most recent premium rates. The Four Year Loss Ratio Report is due one month after the due date of the experience exhibit required by Section 9.

(2) Insurers whose loss ratios are less than the minimum

loss ratio by ten percentage points or more shall file a rating and benefits plan that meets the requirements of Subsection B. Insurers who would be required to decrease rates by more than 10% may phase in decreases in annual 10% increments.

B. Filing Standards.

(1) Insurers filing for a rate deviation, including those required to file under Subsection 1 above, shall submit an actuarial memorandum that shows that the premium rate does not exceed the sum of:

(a) 50% of the prima facie rate or its actuarial equivalent; and

(b) the expected losses.

(2) The calculation of expected losses shall take into account the following:

(a) the actual loss experience to the extent credible;

(b) the degree of underwriting used in marketing the product; and

(c) the relative mortality and morbidity of Utah experience when using national experience or actuarial tables.

#### **R590-91-11. Rating Procedures - Direct Business Only.**

A. Use of Rates Higher Than Prima Facie Rates.

An insurer may file for approval and use rates that are higher than prima facie rates if it can be expected that the use of those higher rates will produce a minimum loss ratio that is required by Section 31A-22-807.

B. Use of Rates Lower Than Filed Rates.

An insurer may use a rate that is lower than its filed rate without notice to the commissioner.

#### **R590-91-12. Disclosure to Debtor.**

A. When a premium or identifiable charge is payable by a debtor for credit insurance coverage, certain information must be disclosed to the debtor at the time the debtor applies for the insurance. The disclosures shall be made to the principal debtor and copies given to the debtor and retained in accordance with State and Federal law. These disclosures shall be made prominently and in close proximity to the space for the signature indicating the election to obtain the coverage. These disclosures may be made in conjunction with the Federal Truth-in-Lending disclosure, a Notice of Proposed Insurance, the application for insurance, or in the individual insurance policy or certificate. The following items must be included in the disclosure:

(1) the optional nature of the coverage;

(2) the premium or identifiable charge separately listed by type of coverage;

(3) eligibility requirements including health restrictions and at work requirements; and

(4) any age restrictions in regard to eligibility for insurance coverage at the time the indebtedness is incurred or in regard to cessation of coverage due to attainment of age.

B. If at any time during the term of the loan, the insurance is insufficient to pay off the scheduled outstanding balance of the loan, this fact must be clearly and prominently disclosed to the prospective insured on the policy or certificate.

C. All credit insurance policies and certificates shall clearly describe the amount of the benefit and the term of coverage. Whenever the amount of credit life insurance exceeds the unpaid indebtedness, such fact shall be clearly disclosed in the policy or group certificate; and such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

D. If any policy or certificate has a preexisting condition exclusion, such exclusion shall be clearly and prominently disclosed.

#### **R590-91-13. Unfair Marketing Practices.**

The commissioner finds that violations of this rule when engaged in by licensees of the department in connection with

the sale or placement of credit insurance, or as an inducement, are misleading, deceptive, or unfairly induce the purchase of credit insurance and constitute unfair methods of competition and shall be in violation of Unfair marketing practices under Section 31A-23a-402.

**R590-91-14. 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 may not be affected.

**R590-91-15. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule on the effective date.

**KEY: insurance law**

**May 29, 2008**

**31A-2-201**

**Notice of Continuation November 17, 2016**

**R602. Labor Commission, Adjudication.****R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-1. Pleadings and Discovery.****A. Definitions.**

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.
3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.
4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.
5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.
6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.
7. "Petitioner" means the person or entity who has filed an Application for Hearing.
8. "Respondent" means the person or entity against whom the Application for Hearing was filed.
9. "Discovery motion" includes a motion to compel or a motion for protective order.
10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

**B. Application for Hearing.**

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.
2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq.
3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate

documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

**C. Answer.**

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

**D. Default.**

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

**E. Waiver of Hearing.**

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the

administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

#### F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions

available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

#### G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

#### H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

#### I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for

permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

#### J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

#### K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by

the Administrative Law Judge.

#### L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

#### M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

#### N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

#### O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

#### P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

#### **R602-2-2. Guidelines for Utilization of Medical Panel.**

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting

a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;
2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,
3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;
4. Conflicting medical opinions related to a claim of permanent total disability, and/or
5. Medical expenses in controversy amounting to more than \$10,000.

B. Objections and Responses.

1. Time. A written Objection to a medical panel report shall be due within 20 days of when the medical panel report is served on the parties. A Response to an Objection shall be filed within 10 days from the date the Objection was filed with the Division. A Reply to an Objection shall be filed within 5 days from the date the Response is filed with the Division.

2. Length. Without prior leave of the Administrative Law Judge, Objections shall not exceed 10 pages. Responses shall not exceed 7 pages, and Replies shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

3. Other than one Objection and one Response and one Reply, no other memoranda shall be considered without prior leave of the Administrative Law Judge.

4. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

#### **R602-2-3. Compensation for Medical Panel Services.**

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be \$125 per half hour for medical panel members and \$137.50 per half hour for the medical panel chair.

#### **R602-2-5. Timeliness of Decisions.**

A. Pursuant to Section 34A-2-801, the Commission adopts the following rule to ensure decisions on contested workers' compensation cases are issued in a timely and efficient manner.

1. This rule applies to all workers' compensation adjudication cases and motions for review filed on or after July 1, 2013.

B. Timeliness standards.

1. The Adjudication Division will issue all interim decisions and all final decisions within 60 days of the date on which the matter is ready for decision unless the parties agree to a longer period of time or issuing a decision within 60 days is impracticable. The Division will maintain a record of those cases in which a decision is not issued within 60 days.

2. The Commissioner or Appeals Board will issue all decisions on motions for review within 90 days of the date on which the motion for review is filed unless the parties agree to a longer period of time or issuing a decision within 90 days is impracticable. The Commission will maintain a record of those cases in which a decision is not issued within 90 days.

C. Yearly Report

1. The Commission shall annually provide to the Business and Labor Interim Committee a report that includes the following information:

a. The number of cases for which an application for hearing was filed during the previous calendar year;

b. The number of cases for which a Division decision was not issued within 60 days of the hearing;

c. The number of cases for which a decision on a motion for review was not issued within 90 days of the date on which the motion for review was filed;

d. The number of cases for which an application for hearing was filed during the previous year that resulted in a final Commission decision issued within 18 months of the filing date; and

e. The number of cases for which an application for hearing was filed during the previous year that did not result in a final Commission issued within 18 months of the filing date and the reason such a decision was not issued.

D. Commission decisions might not be issued within these timeframes if doing so is impracticable.

1. For purposes of this rule, "impracticable" may include but is not limited to:

a. Cases that are sent to a medical panel;

b. Cases in which the hearing record is left open at the request of one or more of the parties or by order of the ALJ;

c. Cases in which one or more parties file post-hearing motions or objections;

d. Cases in which the parties request mediation or an extension of time to pursue settlement negotiations;

e. Cases in which due process requires subsequent or additional adjudication;

f. Cases in which a claimant is required to amend the application for hearing or in which a respondent is required to amend a response or answer; or

g. Cases in which an appellate decision related to the pending case or a similar case may have bearing on the pending case.

E. The Commission will receive the motion for review immediately after the motion is filed with the Adjudication Division.

1. Preliminary evaluation: motions for review.

a. Immediately upon transfer of a motion for review from the Adjudication Division to the Commission, staff will review the ALJ's decision and the motion for review. Responses will be reviewed as they are submitted. Based on that review, staff will prioritize cases for decision in the following order:

i. Cases with statutory mandates to issue quick decisions, such as requests to eliminate or reduce temporary disability compensation.

ii. Cases that require an immediate decision in order to allow the underlying adjudicative proceeding to proceed.

iii. Cases that can be resolved without research or extensive decision-writing.

iv. Cases that need to be decided in a timely manner by the Appeals Board in order to be completed within 90 days.

b. If none of these factors are present, cases will be completed in the order they are received, with the oldest cases receiving priority.

**KEY: workers' compensation, administrative procedures, hearings, settlements**

**November 28, 2016**

**34A-1-301 et seq.**

**Notice of Continuation June 19, 2012**

**63G-4-102 et seq.**

**R612. Labor Commission, Industrial Accidents.****R612-200. Workers' Compensation Rules - Filing and Paying Claims.****R612-200-1. Reporting and Investigating Injuries.****A. Employers' Duty to Report Work Injuries.**

1. An employer is not required to report an injury that requires only first aid treatment, as defined by Subsection R612-100-3.A.

2. Except for injuries treated only by first aid, an employer shall report each employee work injury within 7 days after receiving initial notice of the injury, as follows:

a. An employer that has obtained workers' compensation insurance shall report the injury to its insurance carrier.

b. An employer that has received Division authorization to self-insure shall report the injury to its claims administrator.

c. An employer that has failed to obtain worker's compensation coverage shall report the injury by contacting the Division directly.

3. An employer has notice of a work injury upon the earliest of:

a. Observation of the injury;

b. Verbal or written notice of the injury from any source; or

c. Receipt of any other information sufficient to warrant further inquiry by the employer.

**B. Submitting Reports of Injury to the Division.**

1. Except for injuries treated only by first aid as defined by Subsection R612-100-3.A, an insurance carrier, self-insured claim administrator, or uninsured employer shall submit a First Report of Injury to the Division within fourteen days after receiving initial notice of the injury.

a. An insurance carrier or self-insured claim administrator has notice of a work injury upon receipt of verbal or written information that includes the name of the employer, the name of the employee and the date of injury.

b. The insurance carrier or self-insured claim administrator shall submit the First Report of Injury to the Division electronically in compliance with the content and formatting requirements of the Industrial Accidents Division Claims EDI Implementation Guide ("EDI Guide" V2.2, 04-19-13) and the Utah Claims R3 EDI Tables ("EDI Tables"; 04-19-13) adopted and incorporated by this reference as part of these rules.

c. An uninsured employer shall report the information required by this subsection as part of the employer's initial contact with the Division required by subsection A.2.c of this rule.

**C. Investigation of Claims; Notice to Division and Claimants; Commencement of Benefits.**

1. An insurance carrier, self-insured employer, or uninsured employer shall promptly investigate a reported work injury and either accept or deny workers' compensation liability for the claim within 21 days after receiving initial notice of the injury.

a. If, with reasonable diligence, an insurance carrier, self-insured employer, or uninsured employer cannot complete its investigation within 21 days after initial notice, it may complete and submit Division Form 441, "Notice of Further Investigation of a Workers' Compensation Claim" notify the Division and claimant that the matter remains under investigation. The insurance carrier, self-insured employer, or uninsured employer is then allowed 24 days in addition to the initial 21-day period to complete its investigation and accept or deny liability of the claim.

b. An insurance carrier or self-insured employer denying a claim for workers' compensation benefits shall report such denial through current EDI processes. An uninsured employer denying a claim for workers' compensation benefits shall complete and mail to the Division Form 089, "Employee Notification of Denial of Claim" and to the claimant.

c. If the insurance carrier, self-insured employer, or uninsured employer accepts liability for the claim, payment of benefits shall commence within 7 days from the date of acceptance. The insurance carrier, self-insured employer, or uninsured employer shall use Division Form 141, "Statement of Insurance Carrier or Uninsured Employer with Respect to Payment of Benefits" to report the initial benefits paid to a claimant. Form 141 must accompany the first payment to the claimant and must be filed with or mailed to the Division on that same date.

d. An insurance carrier, self-insured employer, or uninsured employer's payment of benefits during investigation of a claim does not prevent subsequent denial of the claim after the investigation is completed.

**D. Consequences of Failure to Comply.**

1. Pursuant to Subsection 34A-2-407(8) of the Utah Workers' Compensation Act, the Division may impose a civil assessment of up to \$500 for an insurance carrier, insured employer, self-insured employer, or uninsured employer's failure, without good cause, to comply with the requirements of this rule.

a. "Good cause" includes a claimant's unreasonable failure to sign requested medical releases or otherwise cooperate in the investigation of a claim.

b. For improperly filed reports, the civil assessment shall be imposed for the report as a whole and not for each data element within a report.

2. In addition to the civil assessment authorized by Subsection 34A-2-407(8), an insurance company or self-insured employer's failure, without good cause, to comply with the requirements of this rule may result in:

a. referral of the insurance company to the Insurance Department for appropriate disciplinary action; or

b. revocation of a self-insured employer's authorization to remain self-insured.

3. The method of issuing the assessments shall be set by the division's policies and procedures.

4. Assessments shall be issued in the form of an order signed by the division's presiding officer and pursuant to the requirements contained in Section 63G-4-203.

5. An aggrieved party may seek agency review of any order pursuant to Section 63G-4-301.

**R612-200-2. Payment of Benefits, Interest and Attorney Fees.**

A. Timing and payment of benefits. A workers' compensation benefit is due and payable when the claimant has satisfied all legal requirements applicable to that benefit.

1. Payment intervals for compensation. After entitlement to disability compensation or dependent's benefits has been established, such compensation shall be paid in regular intervals of at least once a month, except that TTD and TPD benefits shall be paid twice monthly.

2. Form of payment. A payor may choose to pay benefits by check, debit card or electronic fund transfer, provided that the form of payment allows a claimant to access the full amount of the benefit on the date the payment is due. No fee or charge of any kind may be assessed against the claimant.

3. Employer coordination of employee benefits. Benefits may be paid "in care of" the employer if the employer coordinates employee benefits.

B. Interest. As required by Subsection 34A-2-420(3) of the Utah Workers' Compensation Act, any final order of the Commission awarding benefits will include interest on the principal amount of the benefits at the rate of 8% per annum from the date the benefit or any part thereof was due and payable.

C. Discounting of lump sum payments. Any proposal to pay all or part of a claimant's future workers' compensation

benefits in a present lump sum must be submitted to the Adjudication Division for review and approval. A discount rate of eight percent per annum shall be used to determine the present value of such benefits. The following table may be used to determine a benefit's present value by interpolating, when necessary, the weeks to be discounted between the weeks listed on the table.

TABLE

Unaccrued Weeks	X Weekly Benefit \$	X Cumulative Discount	= Discount \$
1		.001475	
10		.008076	
20		.015343	
30		.022538	
40		.029663	
50		.036719	
60		.043706	
70		.050626	
80		.057478	
90		.064264	
100		.070984	
110		.077639	
120		.084229	
130		.090756	
140		.097221	
150		.103623	
160		.109963	
170		.116243	
180		.122463	
190		.128623	
200		.134724	
210		.140767	
220		.146752	
230		.152680	
240		.158552	
250		.164368	
260		.170129	
270		.175835	
280		.181488	
290		.187087	
300		.192633	
312		.199219	

**R612-200-3. Statement of Compensation.**

At the time a payor first pays permanent partial disability compensation or dependent's benefits to a claimant, the payor shall complete Form 219 "Statement of Compensation." The completed form and supporting documents shall be mailed to the claimant or dependents but need not be filed with the Division unless requested.

**R612-200-4. Insurance Carrier/Employer Liability.**

A. This rule governs responsibility for payment of benefits for a work injury when:

1. The claimant's entitlement to benefits is not in dispute; and
2. There is a dispute between payors regarding their respective liability for such benefits because the claimant has suffered separate compensable injuries which are the liability of the different payors.

B. In cases meeting the criteria of subsection A, the payor providing coverage for the most recent compensable injury shall advance benefits to the claimant. The benefits advanced shall be limited to medical benefits and temporary total disability compensation and shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The payor advancing benefits shall notify the non-advancing payor within the time periods established by Subsection R612-200-1.B, that benefits are to be advanced pursuant to this rule.

2. The payor not advancing benefits, upon notification from the advancing payor, shall notify the advancing payor within 10 working days of any potential defenses or limitations of the non-advancing payor's liability.

C. Payors are encouraged to settle liabilities pursuant to

this rule. However, any party may file a request for agency action with the Commission for determination of liability for the benefits at issue.

D. The medical utilization decisions of the payor advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

**R612-200-5. Permanent Total Disability.**

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

- a. Is the claimant engaged in a substantial gainful activity?
- b. Does the claimant have a medically severe impairment?
- c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?
- d. Does the impairment prevent the claimant from doing past relevant work?
- e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1, 1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties,

the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step - Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

- (i) the requesting party has a substantial possibility of prevailing on the merits;
- (ii) the requesting party will suffer irreparable injury unless a stay is granted; and
- (iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step - Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

D. For purposes of this rule, the following standards and definitions apply:

1. Other work reasonably available: Subject to medical restrictions and other provisions of the Act and rules, other work is reasonably available to a claimant if such work meets the following criteria:

- a. The work is either within the distance that a resident of

the claimant's community would consider to be a typical or acceptable commuting distance, or is within the distance the claimant was traveling to work prior to his or her accident;

b. The work is regular, steady, and readily available; and

c. The work provides a gross income at least equivalent to:

(1) The current state average weekly wage, if at the time of the accident the claimant was earning more than the state average weekly wage then in effect; or

(2) The wage the claimant was earning at the time of the accident, if the employee was earning less than the state average weekly wage then in effect.

2. Cooperation: As determined by an administrative law judge, an employee is not entitled to permanent total disability compensation or subsistence benefits unless the employee fully cooperates with any evaluation or reemployment plan. The ALJ will evaluate the cooperation of the employee using, but not limited to, the following factors: attendance, active participation, effort, communication with the plan coordinator, and compliance with the requirements of the vocational plan. In determining if these factors were met, the ALJ shall consider relevant changes in the employee's documented medical condition.

3. Diligent Pursuit: The employer or its insurance carrier shall diligently pursue the reemployment plan. The ALJ will evaluate the employer or insurance carrier's diligent pursuit of the plan using, but not limited to, the following factors: timely payment of expenses and benefits outlined in the vocational plan, and as required by the educational institution providing the vocational training, communication with the employee, compliance with the requirements of the vocational plan, and timely modification of the plan as required by documented changes in the employee's medical condition.

4. Resolution of disputes regarding "cooperation" and "diligent pursuit": If a party believes another party is not cooperating with or diligently pursuing either the evaluations necessary to establish a plan, or the requirements of an approved reemployment or rehabilitation plan, the aggrieved party shall submit to the workers' compensation mediation unit an outline of the specific instances of non-cooperation or lack of diligence. Other parties may submit a reply. The Mediation Unit will promptly schedule mediation to reestablish cooperation among the parties necessary to evaluate or comply with the plan. If mediation is unsuccessful, a party may request the Adjudication Division resolve the dispute. The Adjudication Division will conduct a hearing on the matter within 30 days and shall issue a written decision within 10 days thereafter.

#### **R612-200-6. Burial Expenses.**

1. The Commission adopts this rule pursuant to authority granted by Section 34A-2-418 of the Utah Workers' Compensation Act.

2. If death results from a work injury, burial expenses up to \$9,000 shall be paid. Unusual circumstances may require additional payment, either voluntarily or through Commission order.

3. During each even-numbered year the Commission shall review this rule and make such adjustments as are necessary so that payment of burial expense required by this rule remains equitable when compared to the average cost of burial in this state.

**KEY: workers' compensation, filing deadlines, time, administrative proceedings**

**November 28, 2016**

**34A-2-101 et seq.**

**34A-3-101 et seq.**

**34A-1-104**

**R612. Labor Commission, Industrial Accidents.****R612-300. Workers' Compensation Rules - Medical Care.****R612-300-1. Purpose, Scope and Definitions.**

A. Purpose and scope. Pursuant to authority granted the Utah Labor Commission under Subsection 34A-2-407(9) and Subsection 34A-2-407.5(1) of the Utah Workers' Compensation Act, these rules establish:

1. Reasonable fees for medical care necessary to treat workplace injuries;
2. Standards for disclosure of medical records;
3. Reporting requirements; and
4. Treatment protocols and quality care guidelines.

B. Definitions. The following definitions apply within Rule R612-300:

1. "Health care provider" is defined by Subsection 34A-2-111(1)(a) as "a person who furnishes treatment or care to persons who have suffered bodily injury" and includes hospitals, clinics, emergency care centers, physicians, nurses and nurse practitioners, physician's assistants, paramedics and emergency medical technicians.

2. "Injured worker" is an individual claiming workers' compensation medical benefits for a work-related injury or disease.

3. "Payor" is the entity responsible for payment of an injured worker's medical expenses;

4. "Physician" is defined by Subsection 34A-2-111(1)(b) to include any licensed podiatrist, physical therapist, physician, osteopath, dentist or dental hygienist, physician's assistant, naturopath, acupuncturist, chiropractor, or advance practice registered nurse.

5. "Workplace injury" is an injury or disease compensable under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

**R612-300-2. Obtaining Medical Care for Injured Workers.**

A. Right of payor to designate initial health care provider.

1. A Payor may adopt managed health care programs. Such programs may designate specific health care providers as "preferred providers" for providing initial medical care for injured workers.

2. A preferred provider program must allow an injured worker to select from two or more health care providers to obtain necessary medical care. At the time a preferred provider program is established, the payor must notify employees of the requirements of the program.

3. If the requirement of subsection A.2. are met, an injured worker subject to a preferred provider program must seek initial medical care from a preferred provider unless:

- a. No preferred provider is available;
- b. The injured worker believes in good faith that his or her medical condition is not a workplace injury; or
- c. Travel to a preferred provider is unduly burdensome.

4. If an injured worker who is subject to a preferred provider program fails to obtain initial medical care from a preferred provider, the payor's liability for the cost of such initial medical care is limited to the amount the payor would have paid a preferred provider. The injured worker may be held personally liable for the remaining balance.

B. Liability for medical expense incurred at payor's direction. If a payor directs an injured worker to obtain an initial medical assessment of a possible work injury, the payor is liable for the cost of such assessment.

1. A medical provider performing an initial assessment must obtain the payor's preauthorization for any diagnostic studies beyond plain x-rays.

C. Injured worker's right to select provider after initial medical care. After an injured worker has received initial care from a preferred provider, the injured worker may obtain subsequent medical care from a qualified provider of his or her

choice. The payor is liable for the expense of such medical care.

1. An injured worker's right to select medical providers is subject to subsection D. of this rule, "Limitations to Injured Worker's Right to Change Physicians."

D. Limitations on injured worker's right to change physicians.

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances DO NOT constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Medically necessary emergency treatment;

d. A change of physician necessitated by the treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured worker shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division of Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

E. Hospital or surgery pre-authorization. Except when immediate surgery or hospitalization is medically necessary on an emergency basis, surgery or hospitalization must be pre-authorized by the payor.

1. Within two working days of receipt of a request for authorization, the payor shall notify the physician and injured worker that the request is either approved or denied, or is undergoing medical review.

2. Any medical review of a pending request for authorization must be conducted promptly.

F. Notification required from injured workers leaving Utah. Section 34A-2-604 of the Workers' Compensation Act requires injured workers receiving medical care for a workplace injury to notify the Industrial Accidents Division before leaving the state or locality. Division forms 043 and Form 044 are to be used to provide such notice.

G. Injured worker's right to privacy. No agent of the payor may be present during an injured worker's medical care without the consent of the injured worker. However, if the payor's agent is excluded from a medical visit, the physician and the injured worker shall meet with the agent at the conclusion of the visit or at some other reasonable time so as to communicate regarding medical care and return-to-work issues.

H. Payor's right of medical examination. The payor may arrange for the medical examination of an injured worker at any reasonable time and place. A copy of the medical examination report shall be made available to the Commission upon request.

**R612-300-3. Required Reports.**

A. Form 123, Physician's Initial Report. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the

worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221, "Restorative Services Authorization Form" required by Subsection R612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Employee's Intent to Leave State, and Form 044, Attending Physician's Statement. These forms are to be submitted to the Division before an injured worker leaves Utah.

D. Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.

**R612-300-4. General Method For Computing Medical Fees.**

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates: "Optum 2016 The Essential RBRVS, 2016 1st Quarter Emergency Update," designated as 1761/RBRCU/U1779R--RBRC15/RBRC/U1779R, ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): \$57.00;
2. Medicine (Evaluation and Medicine Codes 99201 - 99204 and 99211-99214): \$50.00;
3. Pathology and Laboratory: \$56.00;
4. Radiology: \$58.00;
5. Restorative Services: \$50.00;
6. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): \$62.00;
7. Other Surgery: \$40.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

- a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or
- b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

**R612-300-5. Fees for Specific Procedures.**

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the

review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

- a. The patient's condition must have the potential for restoration of function;
- b. The treatment must be prescribed by the treating physician;
- c. The treatment must be specifically targeted to the patient's condition; and
- d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97005, athletic training evaluations; 97006, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97001 through 97610 are limited to payment for a maximum of three procedures/units per visit, or six procedures if different sites are treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payor shall pay the three highest valued procedures for each treatment site for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, and is limited to 4 units per injury claim.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related;

or  
ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

#### E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Stimulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electrophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

#### H. Dental Injuries.

##### 1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

##### 2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed

with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

I. Drug testing. Drug screenings for addictive classes of pain medications shall be performed as recommended in the Utah clinical Guidelines on Prescribing Opiates for Treatment of Pain, Utah Department of Health 2009. The collection and billing shall be limited to one 80300 code per date of service, except for unusual circumstances.

J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:

1. Muscle Testing, CPT codes 95832 through 95857;
2. Computer based Motion Analysis, CPT codes 96000 through 96004;
3. Athletic Training Evaluation, CPT codes 97005 and 97006;
4. Acupuncture, CPT codes 97810 through 97814;
5. Analysis of Data, now BR, CPT code 99090;
6. Patient Education, CPT codes 98960 through 98962;
7. Educational supplies, CPT code 99071; or
8. Thermograms, artificial discs, percutaneous discectomies, endoscopic discectomies, IDEPT, platelet rich plasma injections, thermo-rhizotomies and other heat or chemical treatments for discs.

#### **R612-300-6. Limitations on Fees for Specific Medical Providers and Non-Physicians.**

A. Physician Assistants, Nurse Practitioners, Medical Social Workers, Nurse Anesthetists, and Physical Therapy Assistants. Fees for services performed by physician assistants, nurse practitioners, medical social workers, nurse anesthetists, and physical therapy assistants are set at 75% of the amount that would otherwise be allowed by these rules and shall be billed using an 83 modifier.

B. Assistant Surgeons. Fees for assistant surgeons are limited as follows:

1. Medical doctors, osteopaths and podiatrists, designated with an -80 modifier, are to be paid 20% of the primary surgeon's fee;
2. Minimum paramedicals, designated with an -81 modifier, are to be paid 15% of the primary surgeon's value or 75% of the amount allowed under subsection B. 1., above.
3. When a qualified resident surgeon is not available, 20% of the primary surgeon's fee;
4. Other paramedical assistants, such as surgical assistants, are not billed separately.

C. Home health care. The following fees, which include mileage and travel time, are payable for Home Health Codes 99500 through 99602:

1. RN: \$100/ 2 hours
2. LPN: \$75 / 2 hours
3. Home Health Aide: \$25 / hour + \$6 additional 30 min.
4. Speech Therapists: \$80 / visit
5. Physical Therapy: \$125/ hour
6. Occupational Therapy: \$125/ hour

7. Home Infusion Providers are to be paid according to contract between the payor and home infusion provider. If no contract is established, the payor shall pay the amount specified in Days Guidelines and pay UCR or Cost + 15% for the drugs and supplies.

D. Acupuncturists, naturopathic providers and massage therapy. Payor preauthorization is required for any services provided by acupuncturists and naturopaths. Payment for massage therapy is only allowed when administered by a medical provider and billed according to the requirements of Rule R612-300. 5. C, "Restorative Services."

E. Ambulance. Ambulance charges are limited to the rates set by the State Emergency Medical Service Commission.

#### **R612-300-7. Billing and Payment.**

##### **A. Billing Limitations.**

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

##### **B. Discounting and down-coding.**

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific contract between the medical provider and payor.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

- a. The submitted code is incorrect;
- b. Another code more closely identifies the medical care;
- c. The medical provider has not submitted the documentation necessary to support the code; or
- d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within 30 days of treatment on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

##### **E. Hospital Fees.**

1. The Labor Commission does not have authority to set fees for hospital care of injured workers. However, hospitals are subject to the Commission's reporting requirements, and fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.

2. Fees covering hospital care shall be separate from those

for professional services and shall not extend beyond the actual necessary hospital care.

3. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

##### **F. Charges for Supplies, Materials, or Drugs.**

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid.

##### **G. Miscellaneous.**

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

##### **H. Prompt Payment and Interest.**

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

#### **R612-300-8. Travel Allowance for Injured Workers.**

A. Payment for Travel to Obtain Medical Care. An

injured worker who must travel outside his or her community to obtain necessary medical care is entitled to payment of meals and lodging. An injured worker is entitled to other travel expenses regardless of distance. Payors shall reimburse injured workers for these expenses according to the standards set forth in State of Utah Accounting Policies and Procedures, Section FIACCT 10-02.00, "Travel Reimbursement".

1. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

2. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

B. Time Limits for Requesting and Paying Travel Expenses.

1. Requests for travel reimbursement must be submitted to the payor for payment within one year after the subject travel expenses were incurred;

2. The payor must pay an injured employee's travel expenses at the earlier of:

- a. Every three months;
- b. Upon accrual of \$100 in such expense; or
- c. At closure of the injured worker's claim.

C. Prescriptions. Travel allowance shall not include picking up prescriptions with the following exceptions:

1. Travel allowance will be allowed if documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community;

2. Travel allowance will be allowed in instances where dispensing laws do not allow a medication to be called in to a pharmacy thus requiring an injured worker to physically obtain an original prescription from the provider's office.

#### **R612-300-9. Permanent Impairment Ratings.**

A. Utah's 2006 Impairment Guides. The "Utah 2006 Impairment Guides" are incorporated by reference and are to be used to rate a permanent impairment not expressly listed in Section 34A-2-412 of the Utah Workers' Compensation Act.

B. American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition." For those permanent impairments not addressed in either Section 34A-2-412 or the "Utah 2006 Impairment Guides," impairment ratings are to be established according to the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition."

#### **R612-300-10. Medical Records.**

A. Relationship between HIPAA and Workers' Compensation Disclosure Requirements. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extent authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. Disclosures Permitted Without Authorization. A medical provider, without authorization from the injured worker, shall:

1. For purposes of substantiating a bill submitted for

payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

- a. An employer's workers' compensation insurance carrier or third party administrator;
- b. A self-insured employer who administers its own workers' claims.
- c. The Uninsured Employers' Fund;
- d. The Employers' Reinsurance Fund; or
- e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. Disclosures Requiring Authorization.

1. Except as limited in C(3), a medical provider, whose medical records are relevant to a worker's compensation claim, shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

- a. An employer's insurance carrier or third party administrator;
- b. A self-insured employer who administers its own workers' compensation claims;
- c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;
- d. The Uninsured Employers Fund;
- e. The Employers' Reinsurance Fund;
- f. The Labor Commission;
- g. The injured worker;
- h. An injured workers' personal representative;
- i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

- a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or
- b. The records were created in the past ten years (15 years if permanent total disability is claimed) and:
  - i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or;
  - ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. Disclosure Regarding Return to Work. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Additional Disclosures Requiring Specific Approval. Requests for medical records beyond what subsections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. Appeals. A party affected by the decision made by a person in subsection E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Injured Worker's Duty to Disclose Medical Treatment and Providers. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or persons listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. Injured Worker's Right to Contest Requests for Pre-Injury Medical Records. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. Limitations on Use and Re-disclosure of Medical Information.

1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

- a. Pay or adjudicate workers' compensation claims if the employer is self-insured;
- b. To assess and facilitate an injured workers' return to work;
- c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

4. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. Permissible Fees for Providing Medical Records. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor Commission rules, the following charges are presumed reasonable:

1. A search fee of \$15 payable in advance of the search;
2. Copies at \$.50 per page, including copies of microfilm, payable after the records have been prepared and
3. Actual costs of postage payable after the records have been prepared and sent. Actual cost of postage is deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.
4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).
5. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

6. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost,

when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

- a. History and physical;
- b. Operative reports of surgery;
- c. Hospital discharge summary;
- d. Emergency room records;
- e. Radiological reports;
- f. Specialized test results; and
- g. Physician SOAP notes, progress notes, or specialized reports.

h. Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

#### **R612-300-11. Utilization Review Standards.**

A. Purpose of Utilization Review and Definitions.

1. "Utilization Review" is used to manage medical costs, improve patient care and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization and the review of medical bills to determine whether the medical services were or are necessary to treat a workplace injury. Utilization review does not include:

- a. bill review for the purpose of determining whether the medical services rendered were accurately billed, or
- b. any system, program, or activity used to determine whether an individual has sustained a workplace injury.

2. Any utilization review system shall incorporate a two-level review process that meets the criteria set forth in subsections B and C of this rule.

3. Definitions. As used in this rule:

a. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment.

b. "Reasonable Attempt" requires at least two phone calls and a fax, two phone calls and an e-mail, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Level I - Initial Request and Review.

1. A health care provider may use Form 223 to request authorization and payment for proposed medical treatment. The provider shall attach all documentation necessary for the payor to make a decision regarding the proposed treatment.

a. Requests for approval of restorative services are governed by the provisions of Section R612-300.5. C. 7. which requires submission of the appropriate RSA form and documentation.

2. Upon receipt of the provider's request for authorization, the payor may use medical or non-medical personnel to apply medically-based criteria to determine whether to approve the request. The payor must:

a. Within 5 business days after receiving the request and documentation, transmit Form 223 back to the physician, in a verifiable manner, advising of the payor's approval or denial of the proposed treatment.

i. If approval is denied, the payor must include with its denial a statement of the criteria it used to make its determination. A copy of the denial must also be mailed to the injured worker.

C. Level II - Review.

1. A health care provider who has been denied authorization or has received no timely response may request a physician's review by completing and sending the applicable portion of Commission Form 223 to the payor.

a. The provider must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours.

b. This request for review may be used by a health care

provider who has been denied authorization for restorative services pursuant to Subsection R612-300-5.C.7.

2. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Additional time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

a. The insurer's physician representative must make a reasonable effort to contact the requesting provider to discuss the request for treatment. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case.

b. If the payor again denies approval of the recommended treatment, the payor must complete the appropriate portion of Commission Form 223, and shall include:

i. the criteria used by the payor in making the decision to deny authorization; and

ii. the name and specialty of the payor's reviewing physician;

iii. appeals information.

c. The denial to authorize payment for treatment must then be sent to the physician, the injured worker and the Commission.

3. The payor's failure to respond to the review request within five business days, by a method which provides certification of transmission, shall constitute authorization for payment of the treatment.

D. Mediation and Adjudication. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the injured worker, the final disposition of the case.

1. If the parties agree, the medical dispute will be referred to Commission staff for mediation.

2. If the parties do not agree to mediation, the matter will be referred to the Division of Adjudication for hearing and decision.

E. Reduction of Fee for Failure to Follow Utilization Review Standards.

1. In cases in which a health care provider has received notice of this rule but proceeds with non-emergency medical treatment without obtaining payor authorization, the following shall apply:

a. If the medical treatment is ultimately determined to be necessary to treat a workplace injury, the fee otherwise due the health care provider shall be reduced by 25%.

b. If the medical treatment is ultimately determined to be unnecessary to treat a workplace injury, the payor is not liable for payment for such treatment. The injured worker may be liable for the cost of treatment.

2. The penalty provision in D. 1. shall not apply if the medical treatment in question has been preauthorized by some other non-worker's compensation insurance company or other payor.

#### **R612-300-12. Commission Approval of Health Care Treatment Protocols.**

A. Authority. Pursuant to authority granted by Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

##### **B. Standards**

1. Scientifically based: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be

peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts.

3. Other standards: Pursuant to its rulemaking authority under Subsection 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

#### **R612-300-13. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Service Providers.**

A. Purpose and Authority. This rule, established pursuant to U.C.A. Section 78B-8-404, establishes procedures for testing and reporting following a significant exposure of an emergency medical services provider to infectious diseases.

B. Definitions. In addition to the terms defined in Section 78B-8-401, the following definitions apply for purposes of this rule.

1. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

2. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

3. Source Patient means any individual cared for by a pre-hospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, prisoners or persons in the custody of the Department of Corrections, a county correctional facility, or a public law enforcement entity.

4. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

##### **C. Emergency Medical Services Provider Responsibility.**

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in C.2.

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in C.2.

##### **D. Receiving Facility Responsibility.**

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also

have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing. In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, a county correctional facility, a public law enforcement entity, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

**KEY: workers' compensation, fees, medical practitioners  
November 28, 2016 34A-1-104  
34A-2-201**

**R612. Labor Commission, Industrial Accidents.****R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.****R612-400-1. Policy Reporting by Workers' Compensation Insurance Carriers.**

An insurance carrier writing workers' compensation insurance in Utah shall report to the Division the information required by Section 34A-2-205 of the Utah Workers' Compensation Act as follows:

A. The report shall be filed on behalf of the insurance carrier by an agent that has been approved by the Division as meeting the Division's filing standards.

B. The insurance carrier's agent shall submit the information electronically in accordance with the standards and format established by the International Association of Industrial Accidents Boards and Commissions (IAIABC).

**C. Consequences of Failure to Comply.**

1. Pursuant to Subsection 34A-2-205(1) of the Utah Workers' Compensation Act, the division may impose civil assessments up to \$150 for failure to properly report insurance policy information per the requirements of this rule.

D. Assessments will be issued on a per file or reported policy basis rather than on each individual error within a file or reported policy.

E. The opportunity to correct the filing errors, the amount of the assessments, and the method of issuing shall be set by the division's policies and procedures.

F. Assessments shall be issued in the form of an order signed by the division's presiding officer and pursuant to the requirements contained in Section 63G-4-203.

G. An aggrieved party may seek agency review of any order pursuant to Section 63G-4-301.

**R612-400-2. Workers' Compensation Coverage for Professional Employer Organizations and Client Companies.****A. Purpose, Authority and Scope.**

1. Purpose. The Utah Professional Employer Organization Licensing Act, Title 31A, Chapter 40, Utah Code Annotated, ("the Act") allows a professional employer organization ("PEO") and a client company to establish a contractual relationship by which the PEO and client company are co-employers of some or all of the client company's workers. This rule establishes workers' compensation coverage and reporting requirements for such co-employment relationships.

2. Authority. This rule is enacted pursuant to authority granted by Section 34A-40-209 of the Act.

3. Scope. This rule applies only to those situations in which one or more workers are co-employees of a PEO and client company. The rule does not apply to workers who are solely employed by either a PEO or a client company. In such cases, the coverage and reporting requirements generally applicable to sole employers must be followed.

**B. Alternatives for Providing Workers' Compensation Insurance Coverage for Co-employees.**

1. Coverage provided by Client Company utilizing a PEO. A client company may provide workers' compensation coverage for co-employees of the client company and PEO by purchasing an insurance policy from a workers' compensation insurance company. The insurance policy shall list the client company as the named insured and shall provide coverage for the PEO as an additional insured by means of an individual endorsement.

2. Coverage provided through a PEO for a client company. Alternatively, a PEO may provide workers' compensation coverage for co-employees of the client company and PEO by purchasing an insurance policy, if available, from a workers' compensation insurance company. The insurance policy shall list the PEO as the named insured and shall provide coverage for the client company as an additional insured by means of an individual endorsement.

**C. Insurance Carrier Reporting Obligation.**

1. New Policies. An insurance company providing workers' compensation coverage to a PEO and client company shall comply with the reporting requirements set forth in Subsection R612-400-1. Such reports shall identify any PEO or client company covered by endorsement under the policy.

2. Additional insureds under an existing policy. If an insurance company extends coverage under an existing policy to a PEO or client company by means of an additional endorsement, the company shall report such additional endorsement and coverage to the Division in accordance with the requirements of Section R612-400-1.

3. Cancellations. An insurance company shall notify the Division of cancellation of coverage for any PEO or client company by complying with the requirements of Section R612-400-1. Failure by an insurance company to provide such notice will result in the continuation of coverage by the insurance company until the Division receives notification and may also result in imposition of penalties pursuant to Section 34A-2-205.

**D. Reporting Injuries.**

Work-related injuries of co-employees shall be reported in the name of the client company.

**R612-400-3. Self Insurance of Workers' Compensation Obligations.**

A. Purpose, Authority and Scope. 34A-2-201.5 of the Utah Workers' Compensation Act allows an employer or public agency insurance mutual to request authorization from the Division to self-insure workers' compensation obligations. Pursuant to the authority granted by Section 34A-2-201.5, this rule establishes procedures for applying for authorization to self-insure; it also establishes standards for Division decisions to grant, deny, or revoke such authorization and addresses the process for appealing Division decisions.

B. Definitions. In addition to the definitions found in Subsection 34A-2-201.5(1) and Section R612-100-2, the following definitions apply to this rule:

1. "Acceptable Credit Rating Agency" means Dun and Bradstreet or another similarly reputable credit rating agency acceptable to the Division.

2. "Aggregate Excess Insurance" is the amount of insurance required to cover the total accumulated workers' compensation benefits for all claims payable for a given period of time with the employer retaining an obligation for a designated amount as a deductible and insurance company paying all amounts due thereafter up to a maximum total obligation.

3. "Applicant" means an employer or public agency insurance mutual seeking initial authorization or renewal authorization to self-insure workers' compensation obligations.

4. "Reserve" is defined as the amount necessary to satisfy all debts, past, present, and future, incurred by reason of industrial accidents or occupational diseases, the origins of which commenced prior to the date of reserve determination.

5. "Self-Insured" means an employer or public agency insurance mutual that is authorized by the Division to self-insure workers' compensation obligations.

6. "Specific Excess Insurance" is defined as the amount of insurance required to satisfy workers' compensation obligations related to a workplace accident or disease with the employer retaining an obligation for a designated amount as a deductible and the insurance company assuming the obligation for all amounts due thereafter.

C. Application Process. An Applicant must complete the following process to receive Division authorization to self-insure.

1. The Applicant shall complete Division Form 109, "Application for Self Insurance" and submit the form to the Division, together with payment of the applicable fee as

established by the Commission pursuant to Section 63J-1-504.

2. The Applicant shall demonstrate that it has been in business continuously for five years immediately preceding its application.

a. If the Applicant is a wholly-owned subsidiary of another company, it may satisfy this requirement by demonstrating that the parent company has been in business continuously for five years immediately preceding the application, provided that the parent company guarantees the Applicant's workers' compensation obligations. Unless this guarantee requirement is waived by the Division, the form and substance of any such guarantee is subject to Division approval.

b. If the Applicant has changed its business name, the applicant may satisfy this requirement by demonstrating that it has been in business under a combination of its current name and previous name continuously for five years immediately preceding the application.

c. If the Applicant has been formed by merger of two or more companies, the applicant may satisfy this requirement by demonstrating that it and at least one of its predecessor companies, when considered jointly, have been in business continuously for five years immediately preceding the application.

3. The Applicant shall demonstrate sufficient financial strength and liquidity to pay its workers' compensation obligations promptly and in full. The Applicant shall submit to the Division:

a. A current, certified financial statement or other proof acceptable to the Division of the Applicant's financial ability to pay direct compensation and other related expenses;

b. Proof that the Applicant is covered by specific aggregate excess insurance issued by a company authorized to transact such business in Utah and with policy limits and retention amounts acceptable to the Division. The insurance company shall execute Division Form 303, "Utah Bankruptcy and Insolvency Endorsement" for each covered self-insured entity and shall name the Uninsured Employers' Fund as an additional insured.

c. A surety bond issued by a corporate surety authorized to transact such business in this state or other acceptable security as approved by the Division. If a surety bond is submitted, it shall be issued on Division Form 213E, "Self-Insurance Aggregate Surety Bond" in an amount established by the Division based on its review of the applicant's past incurred losses, exposure, and contingency factors. The minimum bond shall be \$100,000.

i. With Division approval, a surety bond provided under this subsection may be replaced with another surety bond, provided that a 60-day notice of termination of liability is given to the Division by the original surety, the replacement bond is issued on the prescribed form, and the new surety accepts the liability of the previous surety or a guarantee is filed by all sureties acknowledging their respective liabilities and periods of time covering such liabilities.

ii. The Division may waive surety bond requirements for a public entity.

4. The Division shall confirm through Dun and Bradstreet or other acceptable credit rating agency that the Applicant is within the agency's two highest composite credit appraisal ratings and two highest ratings of estimated financial strength.

a. An Applicant that is within the agency's two highest composite credit appraisal ratings but has received only a "fair" or equivalent composite credit rating may be granted authorization to self-insure by satisfying any additional security requirements required by the Division.

b. The Division may waive credit rating requirements for a public entity, provided that the public entity files financial statements or such other supplemental information as the Division finds necessary.

5. The Applicant shall demonstrate its ability to properly administer a self-insurance program.

a. The Applicant shall either procure the services of an insurance carrier or adjusting company to administer claims and establish reserves or demonstrate that the Applicant has sufficient competent staff to perform such tasks.

b. The Applicant or its adjusting company shall maintain within Utah a knowledgeable contact concerning claims and shall maintain a toll free number or accept a reasonable number of collect calls from injured employees.

c. The Applicant shall register with the Division a designated agent in Utah who is authorized to receive on behalf of the Applicant all notices or orders provided for under the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

d. At its discretion, the Division may train and test adjusters and administrators of self-insurance programs.

6. A subsidiary company may rely upon its parent company to satisfy any of the requirements of subsection C of this rule, provided that the parent company guarantees all the subsidiary company's workers' compensation liabilities. The form and substance of such guarantees must be approved by the Division.

D. Division Action to Grant or Deny Authorization to Self-Insure.

1. If the Division determines that the Applicant has satisfactorily completed the application process required by subsection C, the Division shall issue written authorization for the applicant to self-insure. Such authorization shall be effective for one year from issuance and may be renewed annually as set forth in subsection E of this rule.

2. If the Division determines that the Applicant has not satisfied the requirement of subsection C, the Division will issue a written notice denying the Applicant's request to self-insure. The notice of denial shall state the basis for denial, advise the Applicant of any actions necessary to correct deficiencies in its application, and set forth the Applicant's right to appeal the denial.

E. Renewal of Authorization to Self-Insure.

1. Annual Renewal Application. To request annual renewal of authority to self-insure, a self-insured shall complete and submit Division Form 223E, "Renewal Application for Self Insurance" together with payment of the applicable fee as established by the Commission pursuant to Section 63J-1-504.

a. The completed "Renewal Application" and applicable fee must be submitted at least 60 days before the expiration of the previous self-insurance authorization. Late filing of a renewal application may result in suspension or cancellation of self-insurance privileges.

b. Renewal applicants must satisfy all requirements set forth in subsection C of this rule, except that renewal applicants whose financial information cannot be obtained from Dun and Bradstreet will be required to file financial statements or such other supplemental information as the Division finds necessary.

2. If the Division determines that the renewal applicant qualifies for renewal of authorization to self-insure, the Division shall issue a written renewal. Such renewal shall be effective for one year from issuance.

3. If the Division determines that the renewal applicant has not satisfied the requirements of this rule, the Division will issue a written denial of the request to renew, stating the specific basis for denial, advising the applicant of any actions necessary to correct deficiencies in its renewal application, and the applicant's right to appeal the denial.

F. Revocation of Authority to Self-Insure.

1. In cases where a self-insured entity merges with another entity, the existing authorization to self-insure will be revoked and the newly formed entity must apply for authority to self-insure in its own right.

2. If the Division receives complaints regarding a self-insured's practices or ability to satisfy its obligations, has other reason to believe that a self-insured no longer meets the standards for self-insurance set forth in this rule, or has failed to meet other requirements imposed by law upon self-insureds, the Division shall provide written notice to the self-insured and provide the self-insured a reasonable opportunity to respond.

a. If, after reviewing the self-insured's response, the Division remains of the opinion that the self-insured no longer meets the standards for self-insurance, the Division shall commence informal adjudicative proceedings to revoke the self-insured's authority to self-insure.

b. At the conclusion of such proceedings, the Division shall issue either:

i. written confirmation of the self-insured's continuing authority to self-insure; or

ii. written revocation of authority to self-insure, stating the specific basis for revocation, the self-insured's appeal rights, and the self-insured's right to continue its self insured status by providing additional security pursuant to subsection F of this rule.

c. Within 60 days of notice of revocation, a self-insured whose self-insurance privileges are revoked shall obtain security for their reserve requirements under the two step process set forth in subsection G.1 and 2 of this rule.

G. Continuation of Self-Insurance Authorization by Providing Additional Security.

1. A self-insured that falls below the standards required by subsection C.4 of this rule may, at the discretion of the Division, be allowed to continue self-insurance privileges if the following steps are taken:

a. An independent actuarial study, at the self-insured's expense and satisfactory to the Division, establishes the self-insured's reserve requirements.

b. The self-insured provides acceptable security to the Division for such reserve requirements.

2. Self-insured which retain their self-insurance authorization by complying with the requirements of subsection F.1 and 2 are subject to quarterly financial reviews by the Division

H. Appeals.

An entity dissatisfied with a Division decision to deny or revoke self-insured status may contest the decision by filing an Application For Hearing with the Commission's Adjudication Division pursuant to 34A-302(1) of the Utah Labor Commission Act and complying with the rules and procedures of the Adjudication Division.

#### **R612-400-4. Waivers.**

A. Authority and Purpose.

Pursuant to Title 34A, Chapter Two, Part Ten, Workers' Compensation Coverage Waivers Act ("the Act"), this rule establishes procedures for applying for workers' compensation coverage waivers. The rule also addresses the effect of coverage waivers and procedures to be followed by the Labor Commission's Industrial Accidents Division in granting, denying, or revoking coverage waivers.

B. Procedure for Application, Issuance and Renewal of Coverage Waiver.

1. A business entity may obtain a coverage waiver by:

a. completing the application process, available either online at the Utah Labor Commission website or by written application also available at the Commission;

b. submitting the supporting documents required by 34A-2-1004 of the Act; and

c. paying a non-refundable application fee of \$50, used to defray the costs of processing and evaluating the application. Payment of the fee by check may delay issuance of a coverage waiver until the check has been honored.

2. If the Division determines that a business entity has satisfied each requirement for a coverage waiver, the Division will issue the coverage waiver. If the Division determines that a business entity has not satisfied each requirement for a workers' compensation insurance waiver, the Division will issue a written denial to the business entity, stating the basis for denial and setting forth the business entity's appeal rights.

3. Subject to revocation of a coverage waiver as provided by subsection C. of this section, a coverage waiver remains in effect for the following time periods:

a. A coverage waiver issued by a licensed workers' compensation insurance company prior to July 1, 2011, the effective date of the Act, shall remain effective for the period shown on the coverage waiver.

b. A coverage waiver issued by the Division after July 1, 2011, shall be effective for one year from the date the coverage waiver is issued.

4. A business entity may renew a coverage waiver by completing the on-line renewal application available at the Utah Labor Commission website and satisfying the requirements set forth in subsection B.1.b. and c. of this rule.

C. Revocation.

1. If the Division has reason to believe that a business entity no longer qualifies for a coverage waiver, the Division shall institute proceedings to determine whether the business entity's coverage waiver should be revoked. Such proceedings shall be conducted as informal proceedings under the Utah Administrative Procedures Act.

2. If the Division concludes that the business entity does not satisfy each requirement for a coverage waiver, the Division will issue a written order revoking the waiver certificate. The order shall state the basis for revocation and the business entity's appeal rights. The Division may also initiate other proceedings authorized by the Utah Workers' Compensation Act to compel the business entity to obtain workers' compensation coverage for its employees.

D. Appeal Rights.

A business entity may challenge a Division decision to deny or revoke a coverage waiver by filing an appeal of the decision with the Adjudication Division. Such appeal proceedings shall be conducted as de novo formal adjudicatory proceedings under the Utah Administrative Procedures Act.

E. Effect, Verification and Limitation of Coverage Waiver.

1. Effect of coverage waiver. Subsection 34A-2-103 (7) (c) permits an employer contracting with a business entity to rely upon a valid coverage waiver issued by the Division as proof that the business entity is not required to have a workers' compensation insurance policy.

2. Verification of coverage waiver. Before an employer may rely upon a business entity's coverage waiver, the employer shall retain the following documents:

a. A photocopy of the coverage waiver issued to the business entity by the Division; and

b. A printout of the Division's waiver status verification web page showing that the business entity's coverage waiver had not been revoked as of the date on which the employer contracted with the business entity.

3. Limitations to effect of coverage waiver. A coverage waiver does not excuse a business entity from obtaining and maintaining workers' compensation insurance coverage for employees who are entitled to such coverage under the Utah Workers' Compensation Act. If and when a business entity has such employees, any coverage waiver previously issued to that business entity becomes void and the business entity must immediately obtain workers' compensation coverage.

#### **R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.**

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3

and 34A-2-202 the workers' compensation premium rates effective January 1, 2017, as established by the Labor Commission, shall be:

1. 0.25% for the Uninsured Employers' Fund;
2. 3.0% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

**KEY: workers' compensation, insurance, rates, waivers  
November 28, 2016 59-9-101(2)**

**R634. Natural Resources, Administration.****R634-2. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R634-2-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 79-2-404.

**R634-2-2. Authority.**

This rule is authorized under Subsection 79-2-404(6), which directs the Department of Natural Resources to make rules related to health insurance provisions in certain design and/or construction contracts.

**R634-2-3. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 79-2-404.

(2) In addition:

(a) "Department" means the Department of Natural Resources created in Section 79-2-201.

(b) "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.

(c) "Executive Director" means the executive director of the department who is appointed under Section 79-2-202, including, unless otherwise stated, the Director's duly authorized designee.

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

**R634-2-4. Applicability of Rule.**

(1) Except as provided in Subsections R634-2-4(2) or R634-2-4(3) below, Rule R634-2 applies to all design or construction contracts entered into by the Department, 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) Rule R634-2 does not apply if:

(a) the application of Rule R634-2 jeopardizes the receipt of federal funds;

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

(c) the contract is an emergency procurement.

(3) Rule R634-2 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 R634-2-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R634-2-4(1) is guilty of an infraction.

**R634-2-5. Contractors and Subcontractors to Comply with Section 79-2-404.**

(1) All contractors and subcontractors that are subject to the requirement of Section 79-2-404 shall comply with all the requirements, penalties and liabilities of Section 79-2-404.

(2) If a subcontractor of the contractor is subject to Section 79-2-404(2) or Section R634-2-4, 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.

**R634-2-6. 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 Rule R634-2 or Section 79-2-404:

(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.

**R634-2-7. 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 79-2-404.

(1) Demonstrating Compliance with Health Insurance Requirements. A contractor (including design professional) shall demonstrate compliance with Subsection 79-2-404(5)(a) or (b) at the time of execution of each initial contract described in Subsection 79-2-404(2).

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

(b) A contractor (including design professional) subject to Subsection 79-2-404(2) shall demonstrate to the executive 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 the Department. The form shall also require compliance with Section R634-2-5(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 Department 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 Rule R634-2-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 79-2-404(1)(c) that is provided by the Department of Health, in accordance with Section 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 R634-2 shall contain a provision requiring compliance with Rule R634-2 from the time of execution and throughout the duration of the contract.

(5) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under Rule R634-2 conducted by the Department shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Department. The penalties that may be imposed by the Department if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Section 79-2-404 or Rule R634-2 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 79-2-404 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 R634-2-7(5)(c)(i) as provided in Subsection 79-2-404(7)(a). An employee has a private right of action only against the employee's employer to enforce the provision of Subsection 79-2-404(7).

**R634-2-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.**

Nothing in Rule R634-2 shall be construed as to create any contractual relationship whatsoever between the State or the Department with any subcontractor or subconsultant at any tier.

**KEY: health insurance, contractors, contracts, contract requirements**  
**November 22, 2016** **79-2-404**

**R657. Natural Resources, Wildlife Resources.****R657-11. Taking Furbearers.****R657-11-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(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 furbearers.

**R657-11-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device.

(b) "Bait" means any lure containing animal parts larger than one cubic inch with the exception of white-bleached bones with no hide or flesh attached.

(c) "Cage trap" means any enclosure containing a one-way door triggered by a treadle or pan that prevents escape of an animal after the door closes.

(d) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(e) "Foothold trap" means any underspring or jump trap, longspring trap or coil-spring trap with two smooth arms or jaws that come together when an animal steps on a pan in the center of the trap.

(f) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(g) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(h) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for analysis.

(i) "Green pelt" means the untanned hide or skin of any furbearer.

(j) "Owner" means the person who has been issued a trap registration number associated with one or more trapping devices.

(k) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(l) "Scent" means any lure composed of material of less than one cubic inch that has a smell intended to attract animals.

**R657-11-3. License, Permit and Tag Requirements.**

(1) A person who has a valid furbearer license may take furbearers during the established furbearer seasons published in the guidebook of the Wildlife Board for taking furbearers.

(2) A person who has a valid furbearer license and valid bobcat permits may take bobcat during the established bobcat season published in the guidebook of the Wildlife Board for taking furbearers.

(3) A person who has a valid furbearer license and valid marten trapping permit may take marten during the established marten season published in the guidebook of the Wildlife Board for taking furbearers.

(4) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

**R657-11-4. Bobcat Permits.**

(1) Bobcat permits can only be obtained and are only valid with a valid furbearer license.

(2)(a) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board.

(b) Permit numbers shall be published in the guidebook of

the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the guidebook of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

**R657-11-5. Tagging Bobcats.**

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

**R657-11-6. Marten Permits.**

(1) A person may not trap marten or have marten in possession without having a valid furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

**R657-11-7. Permanent Possession Tags for Bobcat and Marten.**

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the second Friday in March;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(c) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw for each harvested bobcat.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the guidebook of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;

(b) Ogden - Regional Office;

(c) Price - Regional Office;

(d) Salt Lake City - Salt Lake Office;

(e) Springville - Regional Office; and

(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the furharvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the furharvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;

(b) location of kill;

(c) species and sex of animal being transported;

(d) origin and destination of such transportation;

(e) the name, address, signature and furbearer license number of the furharvester;

(f) the name of the individual transporting the bobcat or marten; and

(g) the furharvester's marten permit number if marten is being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Furharvesters taking marten are required to present the entire skinned carcass to the division in good condition when brought for permanent tagging.

#### **R657-11-8. Trap Registration Numbers.**

(1) Each trapping device used to take furbearers must be permanently marked or tagged with the registered trap number of the owner.

(2) No more than one trap registration number may be on a trapping device.

(3) Trap registration numbers must be legible.

(4) Trap registration numbers are permanent and may be obtained by mail or in person from any division office.

(5) Applicants must include their full name, including middle initial, and complete home address.

(6) A registration fee of \$10 must accompany the request. This fee is payable only once.

(7) Each individual is issued only one trap registration number.

(8) Any person who has obtained a trap registration number must notify the division within 30 days of any change in address or the theft of traps.

#### **R657-11-9. Traps.**

(1) All foothold traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

- (a) rubber-padded jaw traps,
- (b) traps with jaw spreads less than 4.25 inches, and
- (c) traps that are completely submerged under water when set.

(2)(a) All cable devices (i.e. snares), except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop.

(b) Breakaway cable devices must be fastened to an immovable object solidly secured to the ground.

(c) The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

- (a) the owner of the trapping device;

(b) peace officers in the performance of their duties;

(c) the landowner where the trap has been placed; or

(d) the owner of a domestic pet that has been caught.

(e) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) the owner who must possess a valid permit, license or tag(s) for the species that has been captured;

(b) a peace officer in the performance of their duties;

(c) as provided in Subsection (6); or

(d) as provided in R657-11-12.

(6) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

(i) date written authorization was obtained;

(ii) name and address of the owner;

(iii) owner's trap registration number;

(iv) the name of the individual being given authorization;

(v) signature of owner.

(7) The owner of any trapping device providing written authorization to another person under Subsection (5) shall be strictly liable for any violations of this guidebook resulting from the use of the trapping device by the authorized person.

(8) The owner of any trapping device providing written authorization to another person under Subsection (5) must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(9)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(10) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(11) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(12) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally;

(b) drowning sets; and

(c) lethal cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immovable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

#### **R657-11-10. Use of Bait.**

(1) A person may not use any protected wildlife or their parts, except for white-bleached bones with no hide or flesh attached, as bait or scent; however, parts of legally taken furbearers and nonprotected wildlife may be used as bait.

(2) Traps or trapping devices may not be set within 30 feet of any exposed bait.

(3) Traps may be placed near carcasses of protected wildlife provided the carcass has not been moved or relocated for the purpose of trapping furbearers and the trap is not located within 30 feet of the carcass.

(4) White-bleached bones with no hide or flesh attached may be set within 30 feet of traps.

(5)(a) Bait used inside an artificial cubby set must be placed at least eight inches from the opening.

(b) Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(c) A person using bait is responsible if it becomes exposed for any reason.

#### **R657-11-11. Accidental Trapping.**

(1)(a) Any bear, bobcat, cougar, marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) Permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division within 48 hours.

#### **R657-11-12. Methods of Take and Shooting Hours.**

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives and poisons, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) 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.

#### **R657-11-13. Spotlighting.**

(1) Except as provided in Subsection (3):

(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.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking traps with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) a wildlife service's agent acting in his official capacity under a memorandum of agreement with the division.

#### **R657-11-14. Use of Dogs.**

(1) Dogs may be used to take furbearers only from one-half hour before sunrise to one-half hour after sunset and only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid, current furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

#### **R657-11-15. State Parks.**

(1) Taking 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 on 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 equipment is prohibited within one quarter mile of the above stated areas.

#### **R657-11-16. Transporting Furbearers.**

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

#### **R657-11-17. Exporting Furbearers from Utah.**

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

**R657-11-18. Sales.**

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

**R657-11-19. Wasting Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

**R657-11-20. Depredation by Badger, Weasel, and Spotted Skunk.**

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

**R657-11-21. Depredation by Bobcat.**

(1) Depredating bobcats may be taken at any time by duly appointed Wildlife Services agents, employed by Wildlife Services, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

**R657-11-22. Depredation by Nuisance Beaver.**

(1) Beaver doing damage or other nuisance behaviors may be taken or removed during open and closed seasons with either a valid furbearer license or a nuisance permit.

(2) A nuisance permit to remove beaver must first be obtained from a division office or conservation officer.

**R657-11-23. Survey.**

Each permittee who is contacted for a survey about their furbearer harvesting 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.

**R657-11-24. Prohibited Species.**

(1)(a) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.

(b) Accidental trapping or capture of any of these species must be reported to the division within 48 hours.

**R657-11-25. Season Dates and Bag Limits.**

Season dates, bag limits, and areas with special restrictions are published annually in the guidebook of the Wildlife Board for taking furbearers.

**R657-11-26. Approval to Trap on State Waterfowl Management Areas.**

(1)(a) Trapping on state waterfowl management areas is a property management tool used to protect waterfowl populations and infrastructure improvements found on the property.

(b) The authorization to trap on state waterfowl management areas shall be provided through a certificate of registration that is awarded to an individual or individuals through a competitive proposal solicitation process.

(c) On or before October 1 of each year, the division shall publicly notice which state waterfowl management areas are available for proposal by publishing the notice on its website and by publishing a notice in a newspaper of general circulation at least once a week for two consecutive weeks.

(d) The notification and advertising shall include:

(i) the deadline for applying for the certificate of registration;

(ii) a general description of the trapping area authorized under the certificate of registration;

(iii) the desired form of compensation to the division, whether monetary, in-kind, or both;

(iv) the division's management objectives for the state waterfowl management area; and

(v) any special considerations or limitations the division will require of the trapper or trappers while they are on the state waterfowl management area.

(2)(a) Applications must include the following:

(i) a nonrefundable application fee;

(ii) the name of the state waterfowl management area being applied for;

(iii) a description of the applicant's familiarity with the state waterfowl management area being applied for;

(iv) a list of the individuals who will conduct trapping activities under the certificate of registration;

(v) a description of each individual's experience trapping and their ability to utilize removal of targeted species to protect waterfowl populations and infrastructure found at state waterfowl management areas;

(vi) the projected number of animals, specifically muskrat, that may be removed via trapping;

(vii) how the proposal accomplishes the identified management objectives for the waterfowl management area;

(viii) how the proposal conforms with any special considerations or limitations identified by the division in its public notice; and

(ix) a bid amount to be paid to the Division in exchange for the authorization to trap on the state waterfowl management area.

(c) All individuals listed on the application who will conduct trapping activities under the certificate of registration must meet all age requirements, proof of hunter education and furharvester requirements, and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) The bid amount described in Subsection (vi) above may include non-monetary, in-kind contributions.

(3)(a) Late or incomplete applications may be rejected.

(b) A separate application must be submitted for each state waterfowl management area an individual wishes to trap on.

(c) In the event that there is more than one application for a certain state waterfowl management area, the division will analyze each application and select a successful applicant or applicants whose proposal best accomplishes the division objectives identified in the public notice.

(4) The selected applicant will be issued a certificate of registration authorizing trapping activities on the state waterfowl management area for a period of up to two years.

(5) A certificate of registration issued pursuant to this Part may be revoked, suspended, or terminated consistent with the terms of Utah Code 23-19-9 and Utah Admin. Code R657-26.

**R657-11-27. Fees.**

(1) Upon verified payment of trapping fees, permits will be mailed to successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within 14 days of the results posting date, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

**R657-11-28. Vehicle Travel.**

Vehicle travel is restricted to developed roads. However, written permission for other travel may be obtained from the waterfowl management area superintendent.

**R657-11-29. Trapping Hours.**

On waterfowl management areas traps may be checked only between one-half hour before official sunrise to one-half hour after official sunset.

**R657-11-30. Responsibility of Trappers.**

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

**R657-11-31. Closed Area.**

Davis County - Trapping is allowed only on the dates published in the guidebook of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.

**R657-11-32. Wildlife Management Areas.**

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use without first obtaining written authorization from the appropriate division regional office.

(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use provided the motor vehicle access will not interfere with wildlife or wildlife habitat.

**KEY: wildlife, furbearers, game laws, wildlife law**

November 7, 2016

23-14-18

Notice of Continuation July 13, 2015

23-14-19

23-13-17

**R657. Natural Resources, Wildlife Resources.****R657-41. Conservation and Sportsman Permits.****R657-41-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities;

(b) sportsman permits;

(c) Special Antelope Island State Park Conservation Permits to a conservation organization for marketing and sale at the annual wildlife exposition held pursuant to R657-55; and

(d) Special Antelope Island State Park Limited Entry Permits to successful applicants through a general drawing conducted by the Division.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of species for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

**R657-41-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except area turkey permits are valid during any season option and are valid in any open area during general season hunt.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting the protection and preservation of one or more conservation permit species and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued pursuant to R657-41-12(3).

(h) "Special Antelope Island State Park Limited Entry Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(i) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in

Subsection (k), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(j) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(k) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective;

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation Permits and the Special Antelope Island State Park Limited Entry Permits; and

(vi) Rocky Mountain bighorn sheep on any open unit, excluding the:

(A) Box Elder, Pilot Mountain sheep unit, which is closed to both the Sportsmen permit holder and the Statewide conservation permit holder every year; and

(B) Central Mountains, Nebo/Wasatch Mountains, West sheep unit and Wasatch Mountains, Avintaquin sheep unit, which are closed to the Sportsmen permit holder on odd numbered years and closed to the Statewide conservation permit holder on even numbered years.

**R657-41-3. Determining the Number of Conservation and Sportsman Permits.**

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) the potential number of multi-year and single year permits available for Rocky Mountain bighorn sheep and desert bighorn sheep will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:

(i) 5-14 public permits = 1 conservation permit, 15-24 public permits = 2 conservation permits, 25-34 public permits = 3 conservation permits, 35-44 permits = 4 conservation permits, 45-54 public permits = 5 conservation permits, 55-64 = 6 conservation permits, 65-74 public permits = 7 conservation permits and >75 public permits = 8 conservation permits.

(b) the potential number of multi-year and single year

permits available for the remaining conservation permit species will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:

(i) 11-30 public permits = 1 conservation permit, 31-50 public permits = 2 conservation permits, 51-70 public permits = 3 conservation permits, 71-90 permits = 4 conservation permits, 91-110 public permits = 5 conservation permits, 111-130 = 6 conservation permits, 131-150 public permits = 7 conservation permits and >150 public permits = 8 conservation permits.

(4) The number of conservation permits may be reduced if the number of public permits declines during the time period or which multi-year permits were awarded.

(5) The actual number of conservation and sportsman permits available for use will be determined by the Wildlife Board.

(6) Area conservation permits shall be deducted from the number of public drawing permits.

(7) One sportsman permit shall be authorized for each statewide conservation permit authorized.

(8) All area conservation permits are eligible as multi-year permits except that the division may designate some area conservation permits as single year permits based on the applications received for single year permits.

(9) All statewide permits will be multi-year permits except for a second statewide permit issued for a special event.

#### **R657-41-4. Eligibility for Conservation Permits.**

(1) Statewide and area conservation permits may be awarded to eligible conservation organizations to market and sell, or to use as an aid in wildlife related fund raising activities.

(2) To be eligible for multi-year conservation permits, a conservation organization must have generated in conservation permit sales during the previous three year period at least one percent of the total revenue generated by all conservation organizations in conservation permit sales during the same period. Conservation organizations eligible for multi-year permits may not apply for single year permits, and conservation organizations ineligible for multi-year permits may only apply for single year permits.

(3) Conservation organizations applying for single year permits may not:

(a) bid for or obtain conservation permits if any employee, officer, or board of director member of the conservation organization is an employee, officer, or board of director member of any other conservation organization that is submitting a bid for single year conservation permits; or

(b) enter into any pre-bidding discussions, understandings or agreements with any other conservation organization submitting a bid for conservation permits regarding:

(i) which permits will be sought by a bidder;

(ii) what amounts will be bid for any permits; or

(iii) trading, exchanging, or transferring any permits after permits are awarded.

#### **R657-41-5. Applying for Conservation Permits.**

(1)(a) Conservation organizations may apply for conservation permits by sending an application to the division.

(b) Only one application per conservation organization may be submitted. Multiple chapters of the same conservation organization may not apply individually.

(c) Conservation organizations may apply for single year conservation permits or multi-year conservation permits. They may not apply for both types of conservation permits.

(2) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended; and

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(3) If applying for single year conservation permits, a conservation organization must also include in its application:

(a) the proposed bid amount for each permit requested. The proposed bid amount is the revenue the organization anticipates to be raised from a permit through auction or other lawful fund raising activity.

(b) certification that there are no conflicts of interest or collusion in submitting bids as prohibited in R657-41-4(3);

(c) acknowledgement that the conservation organization recognizes that falsely certifying the absence of collusion may result in cancellation of permits, disqualification from bidding for five years or more, and the filing of criminal charges;

(d) evidence that the application and bid has been reviewed and approved by the board of directors of the bidding conservation.

(e) the type of permit, and the species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4) An application that is incomplete or completed incorrectly may be rejected.

(5) The application of a conservation organization for conservation permits may be denied for:

(a) failing to fully report on the preceding year's conservation permits;

(b) violating any provision of this rule, Title 23 of the Utah Code, Title R657 of the Utah Administrative Code, a division proclamation, or an order of the Wildlife Board; or

(c) violating any other law that bears a reasonable relationship to the applicant's ability to responsibly and lawfully handle conservation permits pursuant to this rule.

#### **R657-41-6. Awarding Single Year Conservation Permits.**

(1) The division shall recommend the conservation organization to receive each single year conservation permit based on:

(a) the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) 90% of the bid amount;

(iii) the organizations maintaining a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the total revenue generated from permit sales, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(2)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw its application for any given permit or exchange its application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws its bid and

the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(3) The Wildlife Board shall make the final assignment of conservation permits at a meeting prior to December 1 annually.

(4) The Wildlife Board may authorize a conservation permit to a conservation organization, other than the conservation organization recommended by the division, after considering the:

- (a) division recommendation;
- (b) benefit to the species;
- (c) historical contribution of the organization to the conservation of wildlife in Utah;
- (d) previous performance of the conservation organization;

and

(e) overall viability and integrity of the conservation permit program.

(5) The total of all bids for permits awarded to any one organization shall not exceed \$20,000 the first year an organization receives permits.

(6) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.

(7) If the Wildlife Board authorizes a second statewide conservation permit for a species, the conservation organization receiving the permit must meet the division designated bid for that permit.

#### **R657-41-7. Awarding Multi-Year Conservation Permits.**

(1) Distribution of multi-year conservation permits will be based on a sequential selection process where each eligible conservation organization is assigned a position or positions in the selection order among the other participating organizations and awarded credits with which to purchase multi-year permits at an assigned value. The selection process and other associated details are as follows.

(2) Multi-year permits will be awarded to eligible conservation organizations for no more than three years.

(3) The division will determine the number of permits available as multi-year permits after subtracting the proposed number of single year permits.

(a) Season types for multi-year area conservation permits for elk on any given hunt unit will be designated and assigned in the following order:

- (i) first permit -- premium;
- (ii) second permit -- any-weapon;
- (iii) third permit -- any-weapon;
- (iv) fourth permit -- archery;
- (v) fifth permit -- muzzleloader;
- (vi) sixth permit -- premium;
- (vii) seventh permit -- any-weapon; and
- (viii) eighth permit -- any-weapon.

(b) Season types for multi-year area conservation permits for deer on any given hunt unit will be designated and assigned in the following order:

- (i) first permit -- hunter choice of season;
- (ii) second permit -- hunter choice of season;
- (iii) third permit -- muzzleloader;
- (iv) fourth permit -- archery;
- (v) fifth permit -- any-weapon;
- (vi) sixth permit -- any-weapon;
- (vii) seventh permit -- muzzleloader; and
- (viii) eighth permit -- archery.

(4) The division will assign a monetary value to each multi-year permit based on the average return for the permit during the previous three year period. If a history is not available, the value will be estimated.

(5) The division will determine the total annual value of all

multi-year permits.

(6)(a) The division will calculate a market share for each eligible conservation organization applying for multi-year permits.

(b) Market share will be calculated and determined based on:

(i) the conservation organization's previous three years performance;

(ii) all conservation permits (single and multi-year) issued to a conservation organization except for special permits allocated by the Wildlife Board outside the normal allocation process.

(iii) the percent of conservation permit revenue raised by a conservation organization during the three year period relative to all conservation permit revenue raised during the same period by all conservation organizations applying for multi-year permits.

(7) The division will determine the credits available to spend by each group in the selection process based on their market share multiplied by the total annual value of all multi-year permits.

(8) The division will establish a selection order for the participating conservation organizations based on the relative value of each groups market share as follows:

(a) groups will be ordered based on their percent of market share;

(b) each selection position will cost a group 10% of the total market share except the last selection by a group will cost whatever percent a group has remaining;

(c) no group can have more than three positions in the selection order; and

(d) the selection order will be established as follows:

(i) the group with the highest market share will be assigned the first position and ten percent will be subtracted from their total market share;

(ii) the group with the highest remaining market share will be assigned the second position and ten percent will be subtracted from their market share; and

(iii) this procedure will continue until all groups have three positions or their market share is exhausted.

(9) At least two weeks prior to the multi-year permit selection meeting, the division will provide each conservation organization applying for multi-year permits the following items:

(a) a list of multi-year permits available with assigned value;

(b) documentation of the calculation of market share;

(c) credits available to each conservation group to use in the selection process;

(d) the selection order; and

(e) date, time and location of the selection meeting.

(10) Between the establishing of the selection order and the selection meeting, groups may trade or assign draw positions, but once the selection meeting begins draw order cannot be changed.

(11) At the selection meeting, conservation organizations will select permits from the available pool according to their respective positions in the selection order. For each permit selected, the value of that permit will be deducted from the conservation organization's available credits. The selection order will repeat itself until all available credits are used or all available permits are selected.

(12) Conservation organizations may continue to select a single permit each time their turn comes up in the selection order until all available credits are used or all available permits are selected.

(13) A conservation organization may not exceed its available credits except a group may select their last permit for up to 10% of the permit value above their remaining credits.

(14) Upon completion of the selection process, but prior to the Wildlife Board meeting where final assignment of permits are made, conservation organizations may trade or assign permits to other conservation organizations eligible to receive multi-year permits. The group receiving a permit retains the permit for the purposes of marketing and determination of market share for the entire multi-year period.

(15) Variances for an extended season or legal weapon choice may be obtained only on area conservation permits and must be presented to the Wildlife Board prior to the final assignment of the permit to the conservation organization.

(16) Conservation organizations may not trade or transfer multi-year permits to other organizations once assigned by the Wildlife Board.

(17) Conservation organizations failing to comply with the reporting requirements in any given year during the multi-year period shall lose the multi-year conservation permits for the balance of the multi-year award period.

(18) If a conservation organization is unable to complete the terms of marketing the assigned permits, the permits will be returned to the regular public drawing process for the duration of the multi-year allocation period.

#### **R657-41-8. Distributing Conservation Permits.**

(1) The division and conservation organization receiving permits shall enter into a contract.

(2)(a) The conservation organization receiving permits must insure that the permits are marketed and distributed by lawful means. Conservation permits may not be distributed in a raffle except where the following conditions are met:

(i) the conservation organization obtains and provides the division with a written opinion from a licensed attorney or a written confirmation by the local district or county attorney that the raffle scheme is in compliance with state and local gambling laws;

(ii) except as otherwise provided in R657-41-8(5), the conservation organization does not repurchase, directly or indirectly, the right to any permit it distributes through the raffle;

(iii) the conservation organization prominently discloses in any advertisement for the raffle and at the location of the raffle that no purchase is necessary to participate; and

(iv) the conservation organization provides the division with a full accounting of any funds raised in the conservation permit raffle, and otherwise accounts for and handles the funds consistent with the requirement in Utah Admin. Code R657-41-9.

(3) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 30 days of the recipient selection or the permit may be forfeited.

(4) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the a division drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(5) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the

division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided in Section R657-41-9;

(d) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(e) the permit has not been issued by the division to the first designated person.

(6) Except as otherwise provided under Subsections (4) and (5), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except for:

(a) elk, provided no more than two permits are obtained where one or both are antlerless permits; and

(b) turkey.

(8) the person designated on a conservation permit voucher must possess or obtain a current Utah hunting or combination license to redeem the voucher for the corresponding conservation permit.

#### **R657-41-9. Conservation Permit Funds and Reporting.**

(1) All permits must be marketed by September 1, annually.

(2) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the total funds raised on each permit;

(c) the funds due to the division; and

(d) a report on the status of each project funded in whole or in part with retained conservation permit revenue.

(3)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by September 1 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), excluding accrued interest, is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before September 1 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the Division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the revenue generated from the sale of conservation permits as follows:

(a) 10% of the revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the revenue may be retained and used by the conservation organization only for eligible projects as provided in subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other projects providing a substantial benefit to species of wildlife for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species or other protected wildlife located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

(v) funds committed to approved projects will be transferred to the division within 90 days of being committed

(A) if the project to which funds are committed is completed under the projected budget or is canceled, funds committed to the project that are not used will be kept by the division and credited back to the conservation organization and will be made available for the group to use on other approved projects during the current or subsequent year.

(vi) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

(vii) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon may be retained and used by the conservation organization for administrative expenses.

(viii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

(ix) retained revenue must be completely expended on or committed to approved eligible projects by September 1, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to commit or expend the retained revenue by the September 1 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is committed to an approved eligible project.

(x) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project expenditures and conservation permit accounts.

#### **R657-41-10. Obtaining Sportsman Permits.**

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

- (a) desert bighorn (ram);
- (b) bison (hunter's choice);
- (c) buck deer;
- (d) bull elk;

(e) Rocky Mountain bighorn (ram)

(f) Rocky Mountain goat (hunter's choice)

(g) bull moose;

(h) buck pronghorn;

(i) black bear;

(j) cougar; and

(k) wild turkey.

(2) The following information on sportsman permits is provided in the proclamations of the Wildlife Board for taking protected wildlife:

(a) hunt dates;

(b) open units or hunt areas;

(c) application procedures;

(d) fees; and

(e) deadlines.

(3) a person must possess or obtain a current Utah hunting or combination license to apply for or obtain a sportsman permit.

#### **R657-41-11. Using a Conservation or Sportsman Permit.**

(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take two turkeys.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-62.

#### **R657-41-12. Special Antelope Island State Park Hunting Permits.**

(1)(a) The Wildlife Board may authorize a hunt for bighorn sheep and buck mule deer on Antelope Island State Park, with one or more permits for each species made available as Special Antelope Island State Park Conservation Permits and an equal number of permits for each species made available as Special Antelope Island State Park Limited Entry Permits.

(b) The Division of Wildlife Resources and the Division of Parks and Recreation, through their respective policy boards, will enter into a cooperative agreement for the purpose of establishing:

(i) the number of permits issued annually for bighorn sheep and buck mule deer hunts on Antelope Island;

(ii) season dates for each hunt;

(iii) procedures and regulations applicable to hunting on Antelope Island;

(iv) protocols for issuing permits and conducting hunts for antlerless deer on Antelope Island when populations require management; and

(v) procedures and conditions for transferring Special Antelope Island State Park Conservation Permit revenue to the Division of Parks and Recreation.

(c) The cooperative agreement governing bighorn sheep and mule deer hunting on Antelope Island and any subsequent amendment thereto shall be presented to the Wildlife Board and the Parks Board for approval prior to holding a drawing or

issuing hunting permits.

(2)(a) Special Antelope Island State Park Limited Entry Permits will be issued by the Division through its annual bucks, bulls, and once-in-a-lifetime drawing.

(i) The mule deer Special Antelope Island State Park Limited Entry Permit is a premium limited entry buck deer permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.

(ii) The bighorn sheep Special Antelope Island State Park Limited Entry Permit is a once-in-a-lifetime Rocky Mountain bighorn sheep permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.

(b) To apply for a Special Antelope Island State Park Limited Entry Permit, the applicant must:

- (i) pay the prescribed application handling fee;
- (ii) possess a current Utah hunting license or combination license;
- (iii) not be subject to a waiting period under R657-62 for the species of wildlife applied for; and
- (iv) otherwise be eligible to hunt the species of wildlife designated on the application;

(c) A person that obtains a Special Antelope Island State Park Limited Entry Permit:

- (i) must pay the applicable permit fee;
- (ii) may take only one animal of the species and gender designated on the permit;
- (iii) may hunt only with the weapon and during the season prescribed on the permit;
- (iv) may hunt the specified species within the areas of Antelope Island designated open by the Wildlife Board and the rules and regulations of the Division of Parks and Recreation; and

(v) is subject to the:

(A) provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife; and

(B) statutes, rules, and regulations of the Division of Parks and Recreation for hunting on Antelope Island.

(d) Bonus points are awarded and utilized in applying for and obtaining a Special Antelope Island State Park Limited Entry Permit.

(e) A person who has obtained a Special Antelope Island State Park Limited Entry Permit is subject to all waiting periods applicable to the particular species, as provided in R657-62.

(f) A person cannot obtain a Special Antelope Island State Park Limited Entry Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(3) Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife expo permit series, as provided in R657-55, for marketing at the wildlife exposition.

(a) The division and conservation organization receiving Special Antelope Island State Park Conservation Permits shall enter into a contract.

(b) The conservation organization receiving Special Antelope Island State Park Conservation Permits must insure that the permits are marketed and distributed by lawful means.

(c) The conservation organization must:

- (i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and
- (ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(d) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit and is also successful in obtaining a permit for the same species in the same year through a division drawing, that person may designate another person to receive the Special Antelope

Island State Park Conservation Permit, provided the permit has not been issued by the division to the first selected person.

(e) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(i) the conservation organization selects the new recipient of the permit;

(ii) the amount of money received by the division for the permit is not decreased;

(iii) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided below:

(A) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(B) the permit has not been issued by the division to the first designated person.

(f) Within 30 days of the exposition, but no later than May 1 annually, the conservation organization must submit to the division:

(i) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;

(ii) the total funds raised on each permit; and

(iii) the funds due to the division.

(g)(i) Permits shall not be issued until the permit fees are paid to the division.

(ii) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in R657-41-9(5)(a).

(h)(i) Conservation organizations shall remit to the division 90% of the total revenue generated by the Special Antelope Island State Park Conservation Permit sales in that year.

(ii) Failure to remit 90% of the total permit revenue to the division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code.

(i) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.

(j) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.

(k) Upon receipt of the permit revenue from the conservation organization, the division will transfer revenue to the Division of Parks and Recreation, as provided in the cooperative agreement under Subsection (1)(b) between the two divisions.

(4)(a) Except as otherwise provided under Subsections (3)(d) and (3)(e), a person designated by a conservation organization as a recipient of a Special Antelope Island State Park Conservation Permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(b) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(c) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.

#### **R657-41-13. Failure to Comply.**

Any conservation organization administratively or criminally found in violation of this rule or the Wildlife

Resources Code may be suspended from participation in the conservation permit program and required to surrender all conservation permit vouchers.

**KEY: wildlife, wildlife permits, sportsmen, conservation permits**

<b>November 28, 2016</b>	<b>23-14-18</b>
<b>Notice of Continuation October 5, 2015</b>	<b>23-14-19</b>

**R708. Public Safety, Driver License.****R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.****R708-41-1. Authority.**

This rule is authorized by Section 53-3-104.

**R708-41-2. Purpose.**

The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

**R708-41-3. Definitions.**

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545

which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

(i) Church records;

(ii) Court records;

(iii) Driver License;

(iv) Employee ID;

(v) Insurance ID card;

(vi) Matricular Consular Card (issued in Utah);

(vii) Mexican Voter Registration card;

(viii) School records;

(ix) Utah DPC;

(x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

(i) United States citizen;

(ii) National of the United States of America; or

(iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) Pending or approved application for asylum in the United States;

(iii) Admission into the United States as a refugee;

(iv) Pending or approved application for temporary

protected status in the United States;

(v) Approved deferred action status;

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident; or

(vii) Conditional permanent resident alien.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status;

(F) Pending application for adjustment of status to legal permanent resident or conditional resident; or

(G) Conditional permanent resident alien.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

(a) Social Security card issued by the U.S. government that has been signed or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number as a result of their legal/lawful presence status.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

(a) Bank statement (dated within 60 days);

(b) Court documents;

(c) Current mortgage or rental contract;

(d) Major credit card bill (dated within 60 days);

(e) Property tax notice (statement or receipt dated within one year);

(f) School transcript (dated within 90 days);

(g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;

(h) Valid Utah vehicle registration or title;

(i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

(18) "Veteran indicator" means the word VETERAN will be added to specific driver license certificates and identification certificates during the application process at the applicant's request and upon the applicant providing proof of an honorable discharge or general discharge under honorable conditions from the United States military in the form of a DD214, DD256, DD257, NGB22 or other documents, if approved by the division director or designee.

**R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification**

**Card, or Limited-Term Identification Card.**

(1) An individual who is applying for a Learner Permit must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or

(b) One legal/lawful presence document as outlined in definition (9)(b) and one identity document as outlined in definition (6)(b); or

(c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and

(d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and

(e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country if younger than 19 years of age.

(f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility

to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with (5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original limited-term CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country if younger than 19 years of age.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country if

younger than 19 years of age.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(11) An individual who is applying for a limited-term driver license for the first time shall be given the opportunity to take the knowledge test on the state of Utah traffic laws in the person's native language must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b)(iii)(B) or (C); and

(b) One identity document as outlined in definition (6)(a)(iv); and

(c) Evidence of their SSN as outlined in definition (11) or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country if the individual is under the age of 19.

#### **R708-41-5. Exceptions.**

This rule does not apply when issuing driver license certificates or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

#### **R708-41-6. Document Storage.**

All documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful/legal presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a U.S. birth certificate may be written on the license or identification card application rather than scanning the document.

**KEY: acceptable documents, identification cards, license certificates, limited-term license certificates**

**November 8, 2016**

**53-3-104**

**Notice of Continuation March 10, 2015**

**53-3-205**

**53-3-214**

**53-3-410**

**53-3-804**

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-1. USTAR Technology Acceleration Program Grants.**

**R856-1-1. Authority.**

(1) Subsection 63M-2-503(2) requires the USTAR governing authority to make rules for the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

**R856-1-2. Purpose and Goals.**

(1) The USTAR Technology Acceleration Program provides grants and other support to assist the following:

(a) start-ups and early stage companies to accelerate the development of a new technology; and,

(b) later-stage companies to mature a new technology.

(2) The goals of the program are to:

(a) enhance the state's innovation system by supporting the development, retention, and attraction of science and technology companies in Utah; and,

(b) accelerate the growth of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.

**R856-1-3. Definitions.**

(1) "Applicant" means a company applying for a USTAR TAP Grant.

(2) "Awardee" means a company that has been awarded a TAP Grant.

(3) "Company" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(4) "Governing authority" means the Utah Science, Technology and Research governing authority.

(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.

(6) "TAP grant" means the competitive grant funding awarded and administered by USTAR under TAP.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the U.S. Department of Defense.

(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grant funding as described in Subsection R856-1-4(2) below.

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-1-4. Eligibility Criteria.**

(1) Company must be Utah-based.

(a) To be considered "Utah-based," a company must:

(i) be registered with the Utah Division of Corporations as an active, domestic, for-profit business entity, in good standing;

(ii) maintain its principal place of business in Utah; and,

(iii) not relocate the business or substantial portions of its employees, operations, or management outside of the State of Utah.

(b) If a company does not meet the criteria in Subsection R856-1-4(1)(a) above, or if it cannot be reasonably determined whether the company meets the criteria, the governing authority,

in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:

(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(ii) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(iii) whether the company's principal place of business is Utah;

(iv) likelihood that the company will maintain a significant presence in the state of Utah; and,

(v) degree to which the company's activities and operations positively impact Utah's economy.

(2) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

(i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

(A) statewide or regional importance of the industry to Utah's economy;

(B) relative size of the sector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,

(F) Likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company;

(3) The company must be developing a technology assessed to be between a TRL of 3-5.

**R856-1-5. Application Form and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization objectives;

(ii) list of technical milestones;

(iii) potential market;

(iv) potential economic impact on Utah economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-6 and R856-1-7 herein.

#### **R856-1-6. Application Review Procedure.**

(1) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness;

(ii) Verification of minimum eligibility requirements; and

(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Rule 6 Section (2) will be rejected.

(2) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-1-7.

(i) Each expert panel will consist of at least two technical expert one business expert, and one investment expert.

(ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.

(iii) Business subject-matter experts will evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal

(iv) Investment experts will evaluate the proposal and provide feedback to USTAR.

(v) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals;

(E) general investment experience; and,

(F) any other factors USTAR deems important.

(vi) USTAR will screen the experts for conflicts of interest before reviews are initiated.

(3) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.

#### **R856-1-7. Application Evaluation Criteria.**

(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period.

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit;

(ii) strength and maturity of company and management;

(iii) potential for economic impact, as measured by:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business

or development of new businesses; and/or

(D) projected time to revenue or job creation;

(iv) market need, technical and management experience and qualifications;

(v) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);

(vi) reasonableness of proposed milestones and timelines; and

(vii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(2) TAP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(3) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

#### **R856-1-8. Grant Amount, Award, and Required Agreement.**

(1) USTAR will have the discretion to determine the maximum amount of funding that may be awarded for each round of TAP based on available funds and quality of applicant pool.

(2) USTAR reserves the right to award funding for any application in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a written agreement with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the written agreement between company and USTAR, the following provisions shall apply:

(a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;

(b) company may not use TAP grant funding to provide a primary benefit to any state other than Utah; and,

(c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) A company that violates the requirements of Subsection R856-1-8(4) forfeits the grant funding and must repay all or a portion of funds received as part of the TAP grant.

#### **R856-1-9. Contract Modifications.**

(1) Company may request a modification to the terms of a TAP agreement.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR

governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement.

**R856-1-10. Funding Distribution.**

(1) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after a TAP grant is approved to allow company to meet initial milestones.

(2) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(3) Specific funding details will be provided in the program announcement and in each TAP grant contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-1-11. Milestones and Reporting.**

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

**KEY: Utah Science Technology and Research (USTAR), Technology Acceleration Program (TAP) grants, technology readiness level (TRL)**  
November 16, 2016 63M-2-302(h)

**R856. Science Technology and Research Governing Authority (Utah), Administration.****R856-2. USTAR University-Industry Partnership Program Grants.****R856-2-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

**R856-2-2. Purpose.**

USTAR's Industry Partnership Program promotes the development of industry-university partnerships for technology development. This program will accelerate the commercialization of technology and innovation by teaming industry and university research expertise to address specific technology problems or gaps identified by a Utah company. The technology development will lead to a new product or a market advantage for the company.

**R856-2-3. Definitions.**

(1) "Applicant" means a collaboration between a company and university researcher for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "Company" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(5) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(6) "IPP" means the USTAR Industry Partnership Program, its activities and services.

(7) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(10) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the U.S. Department of Defense.

(11) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

(12) "University" means any public or not-for-profit institution of higher education located in Utah.

(13) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-2-4. Eligibility Criteria.**

(1) Proposal must be jointly developed by a Utah-based company and a university.

(2) Proposal must be submitted by an authorized body within the university.

(3) An authorized representative from the company must certify that:

(a) Company lacks technical capacity to resolve stated technology gap;

(b) The proposed university technology will resolve the technology gap; and,

(c) Company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

(4) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and,

(ii) company must be properly licensed in the appropriate city or county.

(b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of the IPP grant by weighing the following factors:

(i) size of workforce in Utah;

(ii) percentage of company's total workforce in Utah.

(iii) amount of matching funds

(iv) pays business taxes to the State of Utah.

(v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(vii) whether the company's principal place of business is Utah;

(viii) likelihood that the company will maintain a significant presence in the state of Utah; and,

(ix) the degree to which the company's activities and operations positively impact Utah's economy.

(5) Cost-sharing required:

(a) Company must pledge a matching contribution to support the project;

(b) Company matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) Company Subject Matter Expert(s) (SME);

(B) Materials and equipment;

(C) Work/research space;

(D) Travel and other company expenses budgeted for the project; or,

(E) Other contributions, as approved by USTAR.

(c) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:

(i) size of company; and,

(ii) potential economic impact to state.

(d) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.

(e) All reported cost-share is subject to audit by USTAR.

(5) IPP is open to companies with a technology gap between TRL 2-5.

**R856-2-5. Application Form and Submission Guidelines.**

(1) USTAR will provide the following instructions for applicants:

(a) A general procedure for submitting an application.

(b) Instructions for application content, which includes:

(i) description of technology gap;

(ii) commercialization plan if technology gap is solved;

(iii) description of technical milestones and qualification of team to meet milestones;

(iv) potential economic impact on Utah economy; and,

- (v) timeline for completion.
- (c) Instructions for providing an outlined budget for total project cost, including:
  - (i) a description of funds already secured;
  - (ii) an itemized budget detailing planned use of grant funds; and,
  - (iii) funding by milestones and timelines.
- (d) Description of the application evaluation process and scoring system.
- (e) Instructions for reporting project results and completing annual follow-up surveys.
- (2) The IPP grant application and instructions will be available on USTAR's website and in paper form upon request.
- (3) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.

#### **R856-2-6. Application Review Procedure.**

- (1) Pre-screening.
  - (a) Companies and researchers are encouraged to work with USTAR headquarters or a USTAR regional director in identifying appropriate researchers and developing a proposal.
  - (b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.
- (2) Initial eligibility screening.
  - (a) USTAR will conduct an initial eligibility screening for each application to ensure:
    - (i) completeness;
    - (ii) verification of minimum eligibility requirements; and
    - (iii) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.
  - (b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected.
- (3) Panel Review.
  - (a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.
    - (i) Each expert panel will consist of at least two technical experts and one business expert.
    - (ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.
    - (iii) Business subject-matter experts will provide feedback on the applicant's evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal.
    - (iv) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:
      - (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;
      - (B) relevant work experience and practical training in the field;
      - (C) knowledge of the target industry sector in Utah;
      - (D) experience evaluating grant proposals; and,
      - (E) any other factors USTAR deems important.
    - (v) USTAR will screen the experts for conflicts of interest before reviews are initiated.
  - (4) Governing authority review.
    - (i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.
    - (ii) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.

#### **R856-2-7. Evaluation and Award Criteria.**

- (1) The peer review and business experts will use a scoring system to evaluate and rank grant applications and determine

grant amounts:

- (a) The scoring criteria will be made available during the application period;
- (b) The scoring system will be designed to assess each proposal and may include:
  - (i) Technical merit;
  - (ii) Appropriate technology readiness level (TRL 2-5);
  - (iii) Proposed milestones are reasonably obtainable with the recommended technical approach;
  - (iv) Proposed timeline is achievable and will not exceed 18 months;
  - (v) Potential for economic impact, as measured by potential for:
    - (A) Potential revenue due to expansion of current business or development of new businesses;
    - (B) Product sales; and/or
    - (C) Projected time to revenue or job creation.
  - (vi) Commercialization plan/Market need;
  - (vii) Technical capabilities and experience of the team; and,
  - (viii) Realism of the proposed costs and commitment of matching funds.

#### **R856-2-8. Grant Amount, Award, and Required Contract.**

- (1) USTAR will have the discretion to limit the maximum amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.
- (2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.
- (3) Upon award of an IPP grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.
- (4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:
  - (a) company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds;
  - (b) IPP grant funding may not be used to provide a primary benefit to any state other than Utah; and,
  - (c) for all other eligibility requirements, company must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.
- (5) Violations of Subsection R856-2-8(4) of this section may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the IPP program.

#### **R856-2-9. Contract Modifications.**

- (1) University and Company may request a modification to the terms of an IPP contract.
- (2) USTAR may deny a modification request for any reason.
- (3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.
  - (a) Nonsubstantive changes may include the following:
    - (i) changes to timelines of less than one month if it is the first such modification;
    - (ii) corrections to clerical errors in the application materials;
    - (iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

**R856-2-10. Milestones and Reporting.**

(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

(2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

**KEY: Utah Science Technology and Research (USTAR), Industry Partnership Program (IPP), technology readiness level (TRL)  
November 16, 2016 63M-2-302(h)**

**R856. Science Technology and Research Governing Authority (Utah), Administration.****R856-3. USTAR University Technology Acceleration Grants.****R856-3-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

**R856-3-2. Purpose and Goals.**

(1) University Technology Acceleration Grants provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.

(2) Proposals will be reviewed on a competitive basis. All projects funded through UTAG must have an identified market and/or commercialization path.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR appropriation.

**R856-3-3. Definitions.**

(1) "Applicant" means an individual researcher or a research team applying for a USTAR UTAG.

(2) "Awardee" means an individual researcher or team that have been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "University" means any public or not-for-profit institution of higher education located in Utah.

(5) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

(6) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(7) "Technology Readiness Level" or "TRL" level means Technology Readiness Level, as defined by the U.S. Department of Defense at <https://www.army.mil/e2/c/downloads/404653.pdf>

(8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grant funding as described in Rule 4 Section B, below.

(9) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-3-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Individual researchers or research teams must be developing a technology in a targeted industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a UTAG in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) whether research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(3) If applicable, applicant must have an identified regulatory pathway.

(4) Realistic and verifiable commercialization path for market entry.

(5) Applicant must be developing a technology assessed to be between a TRL of 2-5.

**R856-3-5. Application Form and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization objectives;

(ii) list of technical milestones;

(iii) potential market;

(iv) potential economic impact on Utah economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) Completed applications must be received on or before the specified deadline in the application instructions.

(5) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

**R856-3-6. Application Review Process.**

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) verification of minimum eligibility requirements; and

(iii) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Subsection R856-3-6(2) will not be accepted.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.

(i) Each expert panel will consist of at least two technical experts and one business expert.

(ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.

(iii) Business subject-matter experts will evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal;

(iv) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(v) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The subcommittee will recommend projects and amounts of grant funding to the full governing authority for final approval.

#### **R856-3-7. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit;

(ii) Strength and maturity of research or management team, as applicable;

(iii) Appropriate technology readiness level (TRL 2-5);

(iv) Potential economic impact, as measured by:

(A) Job creation;

(B) Product sales;

(C) Potential revenue due to expansion of current business or development of a new business; and, or,

(D) Projected time to revenue or job creation;

(v) Market need, technical and management experience and qualifications;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed additional funds available to complete work);

(vii) Reasonableness of proposed milestones;

(viii) Proposed timeline is achievable and will not exceed 18 months; and,

(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

#### **R856-3-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the

judgement and discretion of the governing authority.

(3) Upon award of a UTAG, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-3-8(4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.

#### **R856-3-9. Contract Modifications.**

(1) University may request a modification to the terms of an UTAG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

#### **R856-3-10. Milestones.**

(1) UTAG funding must be used to accelerate the development and commercialization of a technology and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the project, and may include:

(a) Research and development activities,

(b) Proof of concept,

(c) Product validation; or,

(d) Product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones. Specific funding details will be provided in the program announcement and in each UTAG contract.

#### **R856-3-11. Funding Distribution.**

(1) Initial funding of no more than 50% of the total grant award will be provided within 30 days of contract signature. Remaining grant funds will be disbursed upon successful completion of designated milestones.

(2) Specific funding details will be provided in the program announcement and in each UTAG grant contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

#### **R856-3-12. Milestones and Reporting.**

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years

following initial receipt of grant funds; or,

(2) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

**KEY: Utah Science Technology and Research (USTAR),  
University Technology Acceleration Grants (UTAG),  
technology readiness level (TRL)  
November 16, 2016** **63M-2-302(h)**

**R861. Tax Commission, Administration.****R861-1A. Administrative Procedures.****R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.**

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

**R861-1A-3. Division Conferences Pursuant to Utah Code****Ann. Sections 59-1-210 and 63G-4-102.**

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

- (1) A request may be oral or written.
- (2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.
- (3) The party requesting a conference will be notified of the result:
  - (a) orally or in writing;
  - (b) in person or through counsel; and
  - (c) at the conclusion of the conference or within a reasonable time thereafter.
- (4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

**R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.**

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

- (2) Appeals to the commission shall include:
  - (a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;
  - (b) a copy of the notice required under Section 59-2-919.1;
  - (c) a copy of the minutes of the board of equalization;
  - (d) a copy of the property record maintained by the assessor;
  - (e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;
  - (f) a copy of the evidence submitted by the parties to the board of equalization;
  - (g) a copy of the petition for redetermination; and
  - (h) a copy of the decision of the board of equalization.
- (3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.
- (4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.
- (5) Appeals to the commission shall be on the merits except for the following:
  - (a) dismissal for lack of jurisdiction;
  - (b) dismissal for lack of timeliness;
  - (c) dismissal for lack of evidence to support a claim for relief.
- (6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.
  - (b) A party may raise a new issue before the commission.
- (7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

- (8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the

commission determines that:

- (a) dismissal under Subsection (5)(a) or (c) was improper;
  - (b) the taxpayer failed to exhaust all administrative remedies at the county level;
  - (c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
  - (d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or
  - (e) a new issue is raised before the commission by a party.
- (9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

**R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.**

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

- 1. these rules and the provisions thereof,
- 2. the revenue laws of the state of Utah, and
- 3. all rules enacted by the Commission in its administration thereof.

**R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.**

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

**R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.**

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business

Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

**R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.**

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the

individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:

Executive Director

Utah State Tax Commission

210 North 1950 West

Salt Lake City, Utah 84134

Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

(i) the individual's name and address;

(ii) the nature and extent of the individual's disability;

(iii) a copy of the accommodation coordinator's reply;

(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

(v) a description of the accommodation desired; and

(vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

(7) Individuals with a disability who are dissatisfied with

the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

**R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.**

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

**R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.**

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

- (i) Internal Audit;
- (ii) Appeals;
- (iii) Economic and Statistical; and
- (iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- (i) Administration;
- (ii) Taxpayer Services;
- (iii) Motor Vehicle;
- (iv) Auditing;
- (v) Property Tax;
- (vi) Processing; and
- (vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

- (a) the agency budget;
- (b) the strategic plan of the agency;
- (c) administrative rules and bulletins;
- (d) waivers of penalty and interest in amounts of \$10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

- (i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and
- (ii) the agreement forgives a known past tax liability of \$10,000 or more.

(6) The commission shall retain authority for the following functions:

- (a) rulemaking;
- (b) adjudicative proceedings;
- (c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
- (d) internal audit processes;
- (e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters

delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

**R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.**

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

**R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-1-1410, 59-2-1007, 59-7-517, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.**

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the

commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with 59-1-1410 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

(b) An appeal under Subsection (4)(a) is deemed to be timely if:

(i) in the case of mailed or hand-delivered documents:

(A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or

(B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or

(ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

(c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

**R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.**

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not

be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

- (a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;
  - (b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;
  - (c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;
  - (d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;
  - (e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and
  - (f) in the case of property tax cases, the assessed value sought.
- (3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

**R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.**

- (1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.
- (2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

**R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.**

- (1) The following may preside at a formal proceeding:
  - (a) a commissioner;
  - (b) an administrative law judge appointed by the commission; or
  - (c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:
    - (i) a commissioner;
    - (ii) an administrative law judge appointed by the commission; or
    - (iii) a hearing officer appointed by the commission.
- (2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.
  - (a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.
  - (b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.
  - (3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.
    - (a) Initial Hearing.
      - (i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.
      - (ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.
      - (iii) Any issue may be settled in the initial hearing, but any

party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

- (iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.
  - (b) Formal Hearing.
    - (i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.
    - (ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

**R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.**

- (1) A scheduling or status conference may be held.
  - (a) At the conference, the parties and the presiding officer may:
    - (i) establish deadlines and procedures for discovery;
    - (ii) discuss scheduling;
    - (iii) clarify other issues;
    - (iv) determine whether to refer the action to a mediation process; and
    - (v) determine whether the initial hearing will be waived.
  - (b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.
  - (2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.
  - (3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.
    - (4) Representation.
      - (a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.
        - (i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.
        - (ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.
        - (iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.
        - (iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile

number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization

decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

**R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.**

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

**R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.**

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled

testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

**R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.**

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or

denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

**R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.**

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

**R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.**

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(3) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(4) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(5) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

**R861-1A-32. Mediation Process Pursuant to Utah Code**

**Section 63G-4-102.**

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

**R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1-502.5.**

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

**B. Procedure:**

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

**R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.**

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued

by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

**R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.****A. Definitions.**

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media

in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and

made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.**

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement

of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

**R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.**

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

- (a) the following information related to the property's tax exempt status:
  - (i) information provided on the application for property tax exempt status;
  - (ii) information used in the determination of whether a property tax exemption should be granted or revoked; and
  - (iii) any other information related to a property's property tax exemption;
- (b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:
  - (i) the amount of penalty or interest that is abated;
  - (ii) information provided on an application or request for abatement of penalty or interest;
  - (iii) information used in the determination of the abatement of penalty or interest; and
  - (iv) any other information related to the amount of penalty or interest that is abated; and
- (c) the following information related to the amount of property tax due on property:
  - (i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;
  - (ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and
  - (iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

- (a) If the property taxpayer that provided the commercial

information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

**R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.**

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

**R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.**

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

**R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.**

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

**R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.**

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute

reasonable cause for a waiver of penalty:

- (a) Timely Mailing:
  - (i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.
  - (ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:
    - (A) has an excellent history of compliance;
    - (B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and
    - (C) presents documentation showing that the return or payment was mailed timely.
- (b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.
- (c) Death or Serious Illness:
  - (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
  - (ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
  - (iii) The death or illness must have occurred on or immediately prior to the due date of the return.
- (d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.
- (e) Disaster Relief:
  - (i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.
  - (ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.
  - (iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.
- (f) Reliance on Erroneous Tax Commission Information:
  - (i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.
  - (ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.
  - (iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.
- (g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.
- (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.
- (i) Reliance on Competent Tax Advisor:
  - (i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.
  - (ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining

whether to seek further advice.

- (j) First Time Filer:
  - (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
  - (ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.
- (k) Bank Error:
  - (i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.
  - (ii) A letter from the bank verifying its error is required.
- (l) Compliance History:
  - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
  - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
- (m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.
- (n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.
- (4) Other Considerations for Determining Reasonable Cause.
  - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
    - (i) whether the commission had to take legal means to collect the taxes;
    - (ii) if the error is caught and corrected by the taxpayer;
    - (iii) the length of time between the event cited and the filing date;
    - (iv) typographical or other written errors; and
    - (v) other factors the commission deems appropriate.
  - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
  - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
  - (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

**R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.**

- (1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:
  - (a) two commissioners are present at a single anchor location; or
  - (b) one commissioner is present at the anchor location.
- (2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.
- (3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.
- (b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

**R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.**

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under

## Section 7502, Internal Revenue Code:

- (1) DHL Express (DHL):
  - (a) DHL Same Day Service;
  - (b) DHL Next Day 10:30 a.m.;
  - (c) DHL Next Day 12:00 p.m.;
  - (d) DHL DHL Next Day 3:00 p.m.; and
  - (e) DHL 2nd Day Service;
- (2) Federal Express (FedEx):
  - (a) FedEx Priority Overnight;
  - (b) FedEx Standard Overnight;
  - (c) FedEx 2 Day;
  - (d) FedEx International Priority; and
  - (e) FedEx International First; and
- (3) United Parcel Service (UPS):
  - (a) UPS Next Day Air;
  - (b) UPS Next Day Air Saver;
  - (c) UPS 2nd Day Air;
  - (d) UPS 2nd Day Air A.M.;
  - (e) UPS Worldwide Express Plus; and
  - (f) UPS Worldwide Express.

**R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.**

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

- (a) follow the procedures set forth in commission rules:
  - (i) R861-1A-9, Tax Commission as Board of Equalization;
  - (ii) R861-1A-11, Appeal of Corrective Action;
  - (iii) R861-1A-20, Time of Appeal;
  - (iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;
  - (v) R861-1A-23, Designation of Adjudicative Proceedings;
  - (vi) R861-1A-24, Formal Adjudicative Proceedings;
  - (vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;
  - (viii) R861-1A-27, Discovery;
  - (ix) R861-1A-28, Evidence in Adjudicative Proceedings;
  - (x) R861-1A-29, Decision, Orders, and Reconsideration;
  - (xi) R861-1A-30, Ex Parte Communications;
  - (xii) R861-1A-31, Declaratory Orders;
  - (xiii) R861-1A-32, Mediation Process;
  - (xiv) R861-1A-33, Settlement Agreements;
  - (xv) R861-1A-34, Private Letter Rulings;
  - (xvi) R861-1A-38, Class Actions;
  - (xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and
  - (xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of each person present at the meeting;
- (c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;
- (d) a record, by commissioner, of each vote taken by the commission;
- (e) a summary of comments made by a person, other than a commissioner, present at the meeting; and
- (f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

- (a) properly labeled or identified with the date, time, and place of the meeting; and
- (b) a complete and unedited record of the meeting.

**R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.**

(1) Definitions.

(a) "Division" means the Auditing Division of the commission.

(b) "Purchaser refund request" means:

- (i) a refund request for sales tax overpaid; and
- (ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.

(c) "Required information and documents" means, for each transaction included in a purchaser refund request:

- (i) a description of the item for which a refund is requested;
- (ii) the invoiced transaction date;
- (iii) the taxable purchase amount;
- (iv) the tax rate applied to the purchase amount;
- (v) the invoice number;
- (vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;
- (vii) the sales tax paid;
- (viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;
- (ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;
- (x) the amount of sales tax overpaid;
- (xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;
- (xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;
- (xiii) the name and address of the seller; and
- (xiv) a signed statement that the seller that calculated and remitted the sales tax:
  - (A) has not provided a sales tax refund or credit; and
  - (B) will not be asked to provide a sales tax refund or credit.

(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.

(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

(d) The notice described in Subsection (2)(c) shall:

- (i) indicate the required information and documents that are missing; and

(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall

provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:

(i) evaluate the purchaser refund request based solely on the required information and documents received; and

(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:

- (i) the invoice number;
- (ii) the invoiced transaction date;
- (iii) the taxable purchase amount;
- (iv) the tax rate applied to the purchase amount;
- (v) the sales tax paid;
- (vi) the amount of sales tax overpaid;
- (vii) the name and address of the seller
- (viii) a description of the item for which a refund is requested; and

(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:

- (i) determine the items that will be included in the sample;
- (ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and

(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time

granted under Subsection (4)(b), shall be:

- (i) considered errors; and
- (ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

**KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements**

**October 24, 2013** **10-1-405**  
**Notice of Continuation November 10, 2016** **41-1a-209**  
**52-4-207**  
**59-1-205**  
**59-1-207**  
**59-1-210**  
**59-1-301**  
**59-1-302.1**  
**59-1-304**  
**59-1-401**  
**59-1-403**  
**59-1-404**  
**59-1-405**  
**59-1-501**  
**59-1-502.5**  
**59-1-602**  
**59-1-611**  
**59-1-705**  
**59-1-706**  
**59-1-1004**  
**59-1-1404**  
**59-7-505**  
**59-10-512**  
**59-10-532**  
**59-10-533**  
**59-10-535**  
**59-12-107**  
**59-12-114**  
**59-12-118**  
**59-13-206**  
**59-13-210**  
**59-13-307**  
**59-10-544**  
**59-14-404**  
**59-2-212**  
**59-2-701**  
**59-2-705**  
**59-2-1003**  
**59-2-1004**  
**59-2-1006**  
**59-2-1007**  
**59-2-704**  
**59-2-924**  
**59-7-517**  
**63G-3-301**  
**63G-4-102**  
**76-8-502**  
**76-8-503**  
**59-2-701**  
**63G-4-201**  
**63G-4-202**  
**63G-4-203**  
**63G-4-204**

63G-4-205 through 63G-4-209  
63G-4-302  
63G-4-401  
63G-4-503  
63G-3-201(2)  
68-3-7  
68-3-8.5  
69-2-5  
42 USC 12201  
28 CFR 25.107 1992 Edition

**R865. Tax Commission, Auditing.****R865-3C. Corporation Income Tax.****R865-3C-1. Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204.**

(1) In general, the provisions of Section R865-6F-8 shall be applied to determine net income attributable to Utah for corporation income tax purposes.

(2) If a corporation derives income from sources within this state, but does not maintain an office within this state from which sales are negotiated or effected, the gross receipts attributable to Utah shall include all receipts of the corporation:

(a) for the performance of a service if the purchaser of the service receives a greater benefit of the service in this state than in any other state;

(b) for the sale of goods delivered to this state or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale;

(c) from a royalty in connection with real property if the real property is in this state;

(d) from other income in connection with real or tangible personal property if the real or tangible personal property is in this state; and

(e) in connection with intangible property if the intangible property is used in this state.

**KEY: taxation, corporation tax**

**April 12, 2012**

**59-7-204**

**Notice of Continuation November 10, 2016**

**R865. Tax Commission, Auditing.****R865-4D. Special Fuel Tax.****R865-4D-1. Utah Special Fuel Tax Regulation Pursuant to Utah Code Ann. Section 59-13-102.**

A. Motor vehicle means and includes every self-propelled vehicle operated or suitable for operation on the highways of the state which is designed for carrying passengers or cargo; but does not include vehicles operating on stationary rails or tracks, or implements of husbandry not operating on the highways.

B. User means any person using special fuel for the propulsion of a motor vehicle on the highways of the state, including:

1. interstate operators of trucks and buses,
2. intrastate operators of trucks and buses, and
3. contractors using special fuel in self-propelled vehicles for carrying of passengers or cargo.

**R865-4D-2. Refund Procedures for Special Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Section 59-13-301.**

(1)(a) "Off-highway," for purposes of determining whether special fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.

(b) "Off-highway" does not include:

- (i) a parking lot that the public may use; or
- (ii) the curbside of a highway.

(2) Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating special fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

(3) Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total special fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

- (a) concrete mixer trucks - 20 percent;
- (b) garbage trucks with trash compactor - 20 percent;
- (c) vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:
  - (i) 3/4 gallon per 1000 gallons pumped; or
  - (ii) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.

(d) Any other method of calculating the amount of special fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

(4) Allowances provided for in Subsections (2) and (3) will be recognized only if adequate records are maintained to support the amount claimed.

(5) In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in Subsection will be refunded to the extent total gallons allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

(6) Special fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

(7) The following documentation must accompany a refund request for special fuel tax paid on special fuel used in a vehicle off-highway:

- (a) evidence that clearly indicates that the special fuel was used in a vehicle off-highway;
- (b)(i) the specific address of the off-highway use with a description that is adequate to verify that the location is off-highway; or
- (ii) if a specific address is not available, a description of the off-highway location that is adequate to verify that the location is off-highway;
- (c) a description of how the vehicle was used off-highway;
- (d)(i) the date of the off-highway use; and
- (ii) if the claimed use is idling while off-highway, the amount of time the vehicle was idling at that location;
- (e) the amount of fuel the vehicle used off-highway; and
- (f) the make and model, weight, and miles per gallon of the vehicle used off-highway.

(8) Special fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

**R865-4D-6. Invoices Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-313.**

A. If requested, a retail dealer must issue to a purchaser of special fuel an invoice that indicates the fuel taxes that have been included in the price of purchased fuel. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;
2. place of sale;
3. date of sale;
4. name and address of purchaser;
5. fuel type;
6. number of gallons sold;
7. unit number or other vehicle identification if delivered into a motor vehicle;
8. type of container delivered into if not a motor vehicle;
9. invoice number; and
10. amount and type of state tax paid on the special fuel, if any.

C. A retail dealer must charge sales tax on diesel fuel that is exempt from special fuel tax unless the retail dealer has received and retains on file a properly completed sales and use tax exemption certificate indicating that the transaction is exempt from sales tax.

D. A retail dealer that sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

- a) name and address of the retail dealer;
  - b) date of sale;
  - c) amount of propane sold; and
  - d) purchaser's name.
- E. A retail dealer that sells propane or electricity exempt from sales tax shall retain the following information for each exempt sale:

1. the make, year, and license number of the vehicle;
2. the name and address of the purchaser; and
3. the quantity (e.g., number of gallons) sold.

F. A retail dealer is not required to obtain an exemption certificate from a purchaser of dyed diesel fuel indicating that

the dyed diesel fuel will be used for purposes other than to operate a motor vehicle upon the highways of the state if the retail dealer complies with the notice requirement under 26 C.F.R. Section 48.4082-2.

G. A retail dealer may not sell dyed diesel fuel exempt from special fuel tax if the retail dealer knows that the fuel will be used to operate a motor vehicle upon the highways of the state.

**R865-4D-18. Maintenance of Records Pursuant to Utah Code Ann. Sections 59-13-305(1) and 59-13-312.**

A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).

B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchase records, and bulk disbursement records. From this information, an accurate average miles per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.

C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles. An adequate IVMR will contain the following information:

1. starting and ending dates of trip;
2. trip origin and destination;
3. route of travel, beginning and ending odometer or hubometer reading, or both;
4. total trip miles;
5. Utah miles;
6. fuel purchased or drawn from bulk storage for the vehicle; and
7. other appropriate information that identifies the record, such as unit number, fleet number, record number, driver's name, and name of the user or operator of the vehicle.

D. If the user fails to maintain or provide adequate records from which the user's true liability can be determined, the Tax Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall take into consideration any or all of the following:

1. any available records maintained and provided by the user;
2. historical filing information;
3. industry data;
4. a flat or standard average mpg figure.
  - a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.

E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon request, the credits will be disallowed.

**R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.**

(1) Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Utah Application for Fuel Tax Refund, form TC-116, to the commission.

(2) A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

- (a) name of the government entity making the purchase;

(b) license plate number of the government vehicle for which the special fuel is purchased;

- (c) invoice date;
- (d) invoice number;
- (e) vendor;
- (f) vendor location;
- (g) product description;
- (h) number of gallons purchased; and
- (i) amount of state special fuel tax paid.

(3) Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

**R865-4D-20. Exemption or Refund for Exported Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.**

A. If untaxed undyed diesel fuel is sold by a supplier directly out-of-state or is sold by a supplier to a purchaser that will deliver the fuel directly out-of-state, the fuel may be sold by the supplier exempt from the special fuel tax.

B. If untaxed undyed diesel fuel is sold tax exempt under A., the supplier shall report the fuel sold tax exempt on the export schedule of its special fuel supplier return.

C. If special fuel tax has been paid on undyed diesel fuel that is exported, the exporter may apply to the Tax Commission, on a monthly basis and on the export refund request form provided by the Tax Commission, for a refund of special fuel taxes paid.

D. Original records supporting the exemption or refund claim must be maintained by the entity claiming the exemption or refund for three years following the year of exemption or refund.

**R865-4D-21. Consistent Basis for Diesel Fuel Reporting Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-307.**

(1) Definitions.

(a) "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

(b) "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

(2) All Utah licensed special fuel suppliers shall elect to calculate the tax liability on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any supplier failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Request for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

(3) All invoices, bills of lading, and special fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API Petroleum Measurement Tables.

(4) All transactions, such as purchases, sales, or deductions must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

(5) This rule shall take effect July 1, 1997.

**R865-4D-22. Reduction in Special Fuel Tax for Suppliers Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-301.**

A. The purpose of this rule is to provide procedures for administering the reduction of special fuel tax authorized under Section 59-13-301.

B. The reduction shall be in the form of a refund.

- C. The refund shall be available only for special fuel:  
 1. delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and  
 2. for which Utah special fuel tax has been paid.  
 D. The refund shall be available to a special fuel supplier that is licensed as a distributor with the Office of the Navajo Tax Commission.  
 E. The refund application may be filed on a monthly basis.  
 F. A completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with schedules and manifests, must be included with the Utah State Tax Commission Application for Navajo Nation Fuel Tax Refund, form TC-126.  
 G. Original records supporting the refund claim must be maintained by the supplier for three years following the year of refund. These records include:  
 1. proof of payment of Utah special fuel tax;  
 2. proof of payment of Navajo Nation fuel tax; and  
 3. documentation that the special fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation.

59-13-304  
 59-13-305  
 59-13-307  
 59-13-312  
 59-13-313  
 59-13-501

**R865-4D-23. State Participation in the International Fuel Tax Agreement Pursuant to Utah Code Ann. Section 59-13-501.**

- A. Pursuant to Section 59-13-501, the commission entered into the International Fuel Tax Agreement ("IFTA") effective January 1, 1990.  
 B. Participation in IFTA is intended to comply with 49 U.S.C. 31705.  
 C. This rule incorporates by reference the 2003 edition of the IFTA:  
 1. Articles of Agreement;  
 2. Procedures Manual; and  
 3. Audit Manual.

**R865-4D-24. Special Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-302.**

- (1) The holder of a license issued under Section 59-13-302 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 special fuel 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 special fuel tax license that has been determined invalid under Subsection (3).  
 (5) The holder of a license issued under Section 59-13-302 shall be responsible for any special fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

**KEY: taxation, fuel, special fuel**

August 27, 2015

Notice of Continuation November 10, 2016

59-13-102  
 59-13-301  
 59-13-302  
 59-13-303

**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 or 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 of 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 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.

(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)(a) and one or more of the factors listed in Subsection 59-7-311(2)(a)(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)(b) and one or more of the factors listed in Subsection 59-7-311(2)(b)(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)(b)(i), and dividing that sum by the denominator indicated in Subsection 59-7-311(2)(b)(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. Sections 611 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**

**July 14, 2016** **9-2-401**  
**Notice of Continuation November 10, 2016** **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.****R865-7H. Environmental Assurance Fee.****R865-7H-1. Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5.**

(1) Retailers or consumers who are owners or operators of tanks, including owners or operators of above-ground storage tanks, who do not participate in the Environmental Assurance Program, may receive an exemption from the environmental assurance fee if:

(a) none of the owner's or operator's tanks are covered under the Environmental Assurance Program; and

(b) the owner or operator purchases the petroleum product for the tank directly from the refinery, or purchases a direct import of a petroleum product for which the environmental assurance fee has not previously been imposed.

(2) Retailers or consumers who are owners or operators of tanks and who do not participate in the Environmental Assurance Program, but who fail to meet the conditions provided under this rule to purchase petroleum products exempt from the environmental assurance fee may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.

(3) For purposes of the exemption and refund provisions of this rule, owners or operators of above-ground storage tanks include owners of fuel stored in tanks owned by a third party where the owner of the fuel pays a fee for use of the tank.

(4) On a monthly basis, the Department of Environmental Quality shall provide the commission with a list of current participants in the Environmental Assurance Program.

**R865-7H-2. Environmental Assurance Fee on Packaged Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.**

(1) Petroleum products that are brought into this state packaged in barrels, drums, and cans are exempt from the environmental assurance fee.

(2) Individuals who purchase petroleum products in bulk quantities and subsequently repackage those petroleum products in barrels, drums, or cans may receive a refund of environmental assurance fees paid on the repackaged petroleum products if, prior to the repackaging, the products were not stored in a tank covered by the Environmental Assurance Program.

(3) Individuals who qualify for a refund of environmental assurance fees under Subsection (2) may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.

**R865-7H-3. Environmental Assurance Fee on Exports of Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.**

(1) Petroleum products exported from a refinery directly out of state by the refiner or the first purchaser are exempt from the environmental assurance fee.

(2) Individuals who store petroleum products in the state and subsequently export those petroleum products from the state may receive a refund of environmental assurance fees paid on the exported petroleum products if, prior to the export of the petroleum products, the petroleum products were not stored in a tank covered by the Environmental Assurance Program.

(3) Individuals who qualify for a refund of environmental assurance fees under Subsection (2) may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.

**KEY: taxation, environment**

**August 25, 2011**

**19-6-410.5**

**Notice of Continuation November 10, 2016**

**R865. Tax Commission, Auditing.****R865-91. Income Tax.****R865-91-2. 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.

**R865-91-3. 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.

**R865-91-6. 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.

**R865-91-7. 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.

**R865-91-18. 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.

**R865-91-19. 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 R865-91-6).

**R865-91-20. 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.

**R865-91-21. 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.

**R865-91-22. 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.

**R865-91-23. 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.

**R865-91-24. 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.

**R865-91-30. 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.

**R865-91-33. 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.

**R865-91-34. 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.

**R865-91-41. 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.

**R865-91-42. 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.

**R865-91-44. 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.

**R865-91-46. 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.

**R865-91-47. 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 R865-91-23(C).

**R865-91-49. 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.

**R865-91-50. 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.

**R865-91-51. 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.

**R865-91-52. 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.

**R865-91-53. 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.

**R865-91-54. 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.

**R865-91-55. 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**

**Notice of Continuation November 10, 2016**

**31A-32A-106  
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**

**R865. Tax Commission, Auditing.**

**R865-11Q. Self-Insured Employer Assessment.**

**R865-11Q-1. Time Period Within Which an Employer Must Obtain an Experience Modification Factor Pursuant to Utah Code Ann. Section 34A-2-202.**

A. An employer shall have until the due date of each annual return to obtain the experience modification factor.

B. The experience modification factor for a taxable year shall be the experience modification factor in effect on January 1 of the taxable year.

C. An employer that fails to obtain the annual experience modification factor within the period established in A. shall be required to use an experience modification factor of 2.0 and a safety factor of 2.0 to calculate the total calculated premium.

**KEY: taxation, self-insured employer**

**April 12, 2011**

**34A-2-202**

**Notice of Continuation November 10, 2016**

**R865. Tax Commission, Auditing.****R865-12L. Local Sales and Use Tax.****R865-12L-1. Local Sales and Use Tax Rules Pursuant to Utah Code Ann. Section 59-12-205.**

A. All rules made pursuant to Title 59, Chapter 12, Part 1, state sales and use taxes, shall apply to the local sales and use tax.

**R865-12L-3. Tax Collection Schedule Pursuant to Utah Code Ann. Section 59-12-204.**

A. A vendor responsible for collecting local sales or use tax in addition to the state tax may use a schedule furnished by the Tax Commission to determine the amount of tax to be collected.

B. For amounts not shown on the schedule, tax may be computed to the nearest cent.

C. The bracket schedule is designed to under collect the tax on some sales within a given bracket and over collect the tax on other sales, in order that the vendor can be reimbursed for the approximate amount of tax that is required to be remitted to the Tax Commission.

**R865-12L-4. Filing of Returns Pursuant to Utah Code Ann. Section 59-12-204.**

A. Every person responsible for the collection of local sales and use tax is required to make a combined state and local sales and use tax return to the Tax Commission.

B. All provisions pertaining to filing returns for state sales and use tax also apply to filing returns for local sales and use tax.

**R865-12L-11. Isolated or Occasional Sale of a Vehicle Pursuant to Utah Code Ann. Section 59-12-204.**

A. The sale of any vehicle subject to the registration laws of this state by anyone other than a licensed dealer shall be subject to the local sales or use tax if the purchaser's address is within any county or municipality which has in effect a local sales and use tax law. The purchaser shall be liable for payment of state and local taxes at the time of registration of the vehicle.

B. The foregoing provision in no way applies to sales of vehicles made by licensed dealers in Utah. All sales of vehicles made by dealers shall be subject to the same laws as sales by any other retailers.

**R865-12L-14. Qualifying Sales and Use Tax and Telecommunications Charge Distributions and Redistributions Pursuant to Utah Code Ann. Sections 59-12-210, 59-12-210.1, and 69-2-5.8.**

(1) For purposes of making a redistribution of revenues under Sections 59-12-210.1 and 69-2-5.8:

(a) "de minimis" means less than \$1,000; and

(b) "extraordinary circumstances" means the following circumstances that the commission becomes aware of:

(i) an error in the commission's tax systems or procedures that increases or decreases the overall distribution of qualifying sales and use tax revenues and qualifying telecommunications charge revenues to a county, city, or town by \$10,000 or more; or

(ii) an error in the calculation, collection, or reporting of a qualifying sales and use tax or qualifying telecommunications charge by a significant segment of an industry if the error increases or decreases the overall distribution of qualifying sales and use tax revenues and qualifying telecommunications charge revenues to a county, city, or town by \$10,000 or more.

(2) The commission shall, on a monthly basis, furnish each county, city, and town with the listings of qualifying sales and use taxes and qualifying telecommunications charges remitted for transactions located within the county, city, or town.

(a) After receiving each listing, the county, city, or town

shall advise the commission within 90 days:

(i) if the listing is incorrect; and

(ii) make corrections regarding firms omitted from the list or firms listed but not doing business in their taxing jurisdiction.

(b) The commission shall make subsequent distributions based on the notification the commission receives from a county, city, or town under Subsection (2)(a).

(3) If a redistribution is required by Sections 59-12-210.1 or 69-2-5.8, the commission shall provide the notice of redistribution described in Subsections 59-12-210.1(2) and 69-2-5.8(2) to each original and secondary recipient political subdivision that is impacted by the redistribution in an amount that exceeds the de minimis amount.

**R865-12L-17. Procedures for Administration of the Tourism, Recreation, Cultural, and Convention Facilities Tax Pursuant to Utah Code Ann. Sections 59-12-602 and 59-12-603.**

(1) Definitions

(a) "Primary business" means the source of more than 50 percent of the revenues of the retail establishment. In the case of a retail establishment with more than two lines of business, primary business means the line of business which generates the highest revenues when compared with the other lines of business.

(b) "Retail establishment" means a single outlet, whether or not at a fixed location, operated by a seller. Retail establishment includes the preparation facilities of caterers, outlets that deliver the alcoholic beverages, food and food ingredients, and prepared food that they prepare, and other similar sellers. A single seller engaged in multiple lines of business at one location may be deemed to be operating multiple retail establishments if the lines of business are not commonly regarded as a single retail establishment or if there are other factors indicating that the lines of business should be treated separately. The operation of concession stands by stadium owners, performers, promoters, or others with a financial interest in ticket sales or admission charges to any event shall be considered a separate line of business constituting a retail establishment.

(c) "Theater" means an indoor or outdoor location for the presentation of movies, plays, or musicals.

(2) If an establishment that is a restaurant under Section 59-12-602 sells prepackaged foods as incidental items with the sale of alcoholic beverages, food and food ingredients, or prepared foods, a tax imposed under Section 59-12-603(1)(b) applies to the prepackaged food as well.

(3) For purposes of collecting the tax imposed on the sale of alcoholic beverages, food and food ingredients, and prepared foods and beverages, the tax will attach in the county in which the food or beverage is served.

(4) A seller that sells foods or beverages prepared for immediate consumption and is uncertain whether it is a restaurant shall make application, in letter form, for exemption with the Tax Commission indicating the circumstances that may qualify it for an exemption. A single application may be filed by a seller for multiple retail establishments if the operations of all of the retail establishments are similar.

**R865-12L-18. Participation of Counties, Cities, and Towns in Determination, Administration, Operation, and Enforcement of Local Option Sales and Use Tax Pursuant to Utah Code Ann. Sections 59-1-403, 59-12-202, 59-12-204, and 59-12-205.**

A. The Tax Commission has exclusive authority, subject to the provisions of B. to determine taxpayer liability for the local option sales and use tax, and to administer, operate, and enforce the provisions of Title 59, Chapter 12, Utah Code Ann., including the provisions of Section 59-12-201, et seq. The Tax

Commission shall:

1. ascertain, assess, and collect any sales and use tax imposed pursuant to Title 59, Chapter 12;
2. determine taxpayer liability for the sales and use tax;
3. represent the counties', cities', and towns' interests in all administrative proceedings commenced pursuant to Title 63, Chapter 46b, or otherwise, involving the state or local option sales and use tax;
4. adjudicate all administrative proceedings commenced pursuant to Title 63, Chapter 46b, or otherwise, involving the state or local option sales and use tax.

B. Counties, cities, and towns shall have access to records and information on file with the Tax Commission, and have notice and such rights to intervene in or to appeal from a proposed final agency action of the Tax Commission as follows:

1. In any case in which the Tax Commission, following a formal adjudicative proceeding commenced pursuant to Title 63, Chapter 46b, Utah Code Ann., takes final agency action that would reduce the amount of sales and use tax liability alleged in the notice of deficiency, the Tax Commission will provide notice of a proposed agency action to all qualified counties, cities, and towns.

a) A county, city, or town is a qualified county, city, or town for purposes of B.1. above if the proposed final agency action reduces the local option sales and use tax distributable to that individual county, city, or town by more than \$10,000 below the amount of that tax that would have been distributable to that county, city, or town had the notice of deficiency not been reduced.

2. Upon notification from the Tax Commission of proposed final agency action, the authorized representative of the qualified county, city, or town has the right to review the record of the formal hearing and all Tax Commission records relating to the proposed final agency action in accordance with the provisions of Part F of this rule.

3. Within ten days following receipt of notice of a proposed final agency action, a qualified county, city, or town may intervene in the Tax Commission proceeding by filing a notice of intervention with the Tax Commission.

4. Within 20 days after filing a notice of intervention, if a qualified county, city, or town objects to the proposed final agency action in whole or in part, it will file with the Tax Commission a petition for reconsideration setting out all facts, arguments and authorities in support of its contention that the proposed final agency action is erroneous and shall serve copies of the petition on the taxpayer and the appropriate Tax Commission division.

5. The taxpayer and the appropriate Tax Commission division may each file a response to the petition for reconsideration filed by a qualified county, city, or town within 20 days of receipt of the petition for reconsideration.

6. After consideration of the petition for reconsideration and any response, and any further proceedings it deems appropriate, the Tax Commission may affirm, modify, or amend its proposed final agency action. The taxpayer and any qualified county, city, or town that has filed a petition for reconsideration may appeal the final agency action in accordance with applicable statutes and rules.

C. Counties, cities, and towns shall only have such notice of and such rights to intervene in or to appeal from a proposed final agency action of the Tax Commission in sales and use tax cases as are provided herein.

D. Counties, cities, and towns are subject to the confidentiality provisions of Section 59-1-403(1) and (5) and standards as set forth in Section 59-2-206 concerning all Tax Commission taxpayer sales and use tax records to which they are granted access.

E. Counties, cities, and towns shall be provided such information regarding sales and use tax collections as is

necessary to verify that the local sales and use tax revenues collected by the Tax Commission are distributed to each county, city, and town in accordance with Sections 59-12-205 and 59-12-206, including access to the Tax Commission's reports of vendor sales, sales tax distribution reports and breakdown of local revenues.

F. When a county, city, or town objects to a proposed final agency action of the Tax Commission pursuant to the provisions of Part A, of this rule, the authorized representative of a county, city, or town shall, subject to the confidentiality provisions of Part D, have access to such Tax Commission sales and use tax records as is necessary for the county, city, or town to contest the Tax Commission's final agency action.

**KEY: taxation, sales tax, restaurants, collections**

<b>July 26, 2012</b>	<b>59-12-118</b>
<b>Notice of Continuation November 10, 2016</b>	<b>59-12-205</b>
	<b>59-12-207</b>
	<b>59-12-210</b>
	<b>59-12-210.1</b>
	<b>59-12-301</b>
	<b>59-12-355</b>
	<b>59-12-501</b>
	<b>59-12-502</b>
	<b>59-12-602</b>
	<b>59-12-603</b>
	<b>59-12-703</b>
	<b>59-12-802</b>
	<b>59-12-804</b>

**R865. Tax Commission, Auditing.****R865-13G. Motor Fuel Tax.****R865-13G-1. Carrier's Reports of Motor Fuel Deliveries Pursuant to Utah Code Ann. Section 59-13-208.**

A. Carrier means every individual, firm, partnership, group, or corporation importing or transporting motor fuels into the state of Utah by means of conveyance, whether gratuitously, for hire, or otherwise. It includes both common and private carriers, as those terms are commonly used.

B. Every carrier delivering motor fuels, as defined in Utah Code Ann. Section 59-13-102, within this state must submit written reports of all deliveries from outside Utah. The Tax Commission will furnish forms and the forms must be submitted on or before the last day of each month to cover fuel imported during the previous month.

**R865-13G-3. Export Sales Pursuant to Utah Code Ann. Section 59-13-201.**

A. Sales and deliveries of motor fuel, by a Utah licensed distributor are exempt, provided one of the following requirements is met:

1. delivery is made to a point outside this state by a common or contract carrier to a Utah licensed distributor;
2. delivery is made to a point outside this state in a vehicle owned and operated by a Utah licensed distributor;
3. delivery is made at a point in or outside this state to a distributor or importer licensed in another state for use or sale in that state; or
4. delivery is made, in a drum or similar container, at a point in the state of Utah to a person for use in another state.

B. Each export sale must be supported by records that disclose the following information.

1. If sold to a licensed distributor, records shall show the date exported, the consignee or purchaser, and the destination of the motor fuel.

2. If the exporter is not a licensed distributor, credit must be claimed through a licensed distributor and the following requirements must be met:

(a) the exporter must furnish a licensed distributor with a completed Form TC-112 Proof of Exportation -- Motor Fuel, showing the date, the purchaser or consignee, and the destination of the motor fuel;

(b) the licensed distributor shall make note of the date this information is furnished and make claim for credit due on the motor fuel return for the same period in which the Form TC-112 was received;

(c) claims for credit or refund must be made within 180 days from date of export, whether the claim is made through a licensed distributor or directly to the Tax Commission; all persons authorized to do so must file a claim directly with the Tax Commission; and

C. motor fuel delivered into the fuel tank or auxiliary fuel tank of any vehicle owned or operated by a resident or a nonresident of this state is taxable.

**R865-13G-5. Sales to Licensed Distributors Pursuant to Utah Code Ann. Sections 59-13-203.1 and 59-13-204.**

(1)(a) A motor fuel dealer engaged in the business of selling motor fuel for resale in wholesale quantities may elect to become a licensed distributor under the provisions of Sections 59-13-203.1 and 59-13-204.

(b) License and bond requirements contained in Section 59-13-203.1 must be fulfilled when a dealer makes this election.

(2) A licensed distributor wishing to purchase motor fuel without payment of tax at the time of purchase must furnish each of the distributor's suppliers with a signed letter containing the following information:

(a) a statement advising that the purchaser is the holder of a valid motor fuel tax license;

(b) the number of the license; and

(c) a statement that the purchaser will assume the responsibility and liability for the payment of motor fuel tax on all future purchases of motor fuel.

(3) The letter from the purchaser must be retained by the seller as part of the seller's permanent records.

**R865-13G-6. Product Considered Exempt Pursuant to Utah Code Ann. Section 59-13-210.**

A. Volatile or inflammable liquids which qualify as motor fuels under Utah laws but which in their present state are not usable in internal combustion engines and in fact are not used as motor fuels in internal combustion engines are exempt if sold in bulk quantities of not less than 1,000 gallons at each delivery.

B. The licensed motor fuel importer, refiner, or licensed distributor shall submit specifications and other related data to the Tax Commission. If the Tax Commission agrees that the product is not a taxable motor fuel in its current state, it may be sold exempt provided it is determined that all of the product sold will be used for other than use in an internal combustion engine.

C. The Tax Commission may set reporting and verification requirements for nontaxable products if additional sales are made to the same purchaser for identical use. Failure to submit reports, verification, or specifications upon request by the Tax Commission will result in the product losing its exempt status.

D. Sellers and purchasers of the exempt product must maintain records to show the use of the product together with laboratory specifications to indicate its quality. These records must be available for audit by the Tax Commission.

E. Any exempt products subsequently sold in their original state for use as a motor fuel, or to be blended with other products to be used as a motor fuel, will be subject to the motor fuel tax at the time of sale.

**R865-13G-8. Nonhighway Agricultural Use Pursuant to Utah Code Ann. Section 59-13-202.**

A. Every person who purchases motor fuel within this state for the operation of farm engines, including self-propelled farm machinery, used solely for nonhighway agricultural purposes, is entitled to a refund of the Utah Motor Fuel Tax paid thereon.

1. Agricultural purposes relate to the cultivation of the soil for the production of crops, including: vegetables, sod crops, grains, feed crops, trees, fruits, nursery floral and ornamental stock, and other such products of the soil. The term also includes raising livestock and animals useful to man.

2. Refunds are limited to the person raising agricultural products for resale or performing custom agricultural work using nonhighway farm equipment. It is further limited to persons engaged in commercial farming activities rather than those engaged in a hobby or farming for personal use.

3. Fuel used in the spraying of crops by airplanes does not ordinarily qualify for refund since aviation fuel tax rather than motor fuel tax normally applies to the sale of this fuel.

**R865-13G-9. Solid Hydrocarbon Motor Fuel Exemptions Pursuant to Utah Code Ann. Section 59-13-201.**

A. Motor fuels refined in Utah from solid hydrocarbons located in Utah are exempt from the motor fuel tax. If any exempt product is blended into gasoline refined from oil or into gasohol produced by blending gasoline and alcohol, the resulting product will be exempt only to the extent of the exempt hydrocarbon fuel included in the final blended product.

1. For example, if the motor fuel produced from solid hydrocarbons is blended with product containing 90 percent motor fuel produced from oil, 10 percent of the total product will be exempt from the motor fuel tax. To the extent possible, the solid hydrocarbon exemption should be claimed by the

person refining or distilling the exempt product.

B. If the resulting blended motor fuel is exported from Utah or sold to a tax-exempt government agency, the exemption claimed as a result of the export or government sales must be reduced by the amount of exemption claimed for the motor fuel produced from solid hydrocarbons in Utah.

C. In order for this adjustment to be made in cases where the export or exempt sale is made by someone other than the refiner or blender, the invoice covering the sale of the fuel must designate the amount of exempt product included in the motor fuel sold. This must be shown whether sold to a licensed distributor or to an unlicensed distributor.

1. If the exempt, or partially exempt product is sold to a licensed distributor, the distributor must make the adjustment on the form used to claim credit for the government sale or the export.

2. If sold to an unlicensed distributor, the export form or government sale form submitted to a licensed distributor for a claim must contain a statement disclosing the amount of exempt motor fuel included.

3. If the records are insufficient to disclose the identity of the exempt purchaser on a direct basis, an adjustment shall be made multiplying the exempt product by a percentage factor representing the government and export sales portion of total motor fuel sales for the same period.

**R865-13G-10. Exemption For Purchase of Motor Fuels by State and Local Government Agencies Pursuant to Utah Code Ann. Section 59-13-201.**

(1) Sales to an Indian tribe for its exclusive use, acting in its tribal capacity, are exempt from taxation. Sales to individual tribal members, to Indian businesses operating on or off tribal territory, or to other nontribal organizations for personal use, retail sales purposes, or distribution to third parties do not qualify for the exemption for sales to Indian tribes.

(2) Licensed distributors may claim the exemption on sales to government agencies by taking the deduction on their motor fuel tax return for the month in which the sales occurred.

(a) Nonlicensed distributors making qualifying sales to government agencies must obtain credit for the exemption through the return of the licensed distributor supplying them with the fuel for the sales.

(b) A licensed distributor shall support each sale claimed as a deduction by retaining a copy of the sales invoice. The sales invoice must be in proper form and must contain sufficient information to substantiate the exemption status of the sale according to this rule.

(3) The fuel tax exemption for motor fuel sold to the United States, this state, or a political subdivision of this state shall be administered in the form of a refund if the government entity purchases the motor fuel after the tax imposed by Title 59, Chapter 13, Part 2 was paid. For refund procedures, see rule R865-13G-13.

**R865-13G-11. Consistent Basis for Motor Fuel Reporting Pursuant to Utah Code Ann. Section 59-13-204.**

A. Definitions:

1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

B. All Utah licensed distributors shall elect to calculate the tax liability on the Utah Motor Fuel Tax Returns on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any licensed distributor failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Requests for changes

in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

C. If the election is made to purchase under the net gallon basis, all invoices, bills of lading, and motor fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-Petroleum Measurement Tables.

D. All transactions such as purchases, sales, or deductions, reported on the Motor Fuel Tax Return must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

E. This rule shall take effect January 1, 1992.

**R865-13G-13. Refund of Motor Fuel Taxes Paid Pursuant to Utah Code Ann. Section 59-13-201.**

(1) Governmental entities entitled to a refund for motor fuel taxes paid shall submit a completed Utah Application for Fuel Tax Refund, form TC-116, to the commission.

(2) A government entity shall retain the following records for each purchase of motor fuel for which a refund of taxes paid is claimed:

- (a) name of the government entity making the purchase;
- (b) license plate number of vehicle for which the motor fuel is purchased;
- (c) invoice date;
- (d) invoice number;
- (e) supplier;
- (f) vendor location;
- (g) fuel type purchased;
- (h) number of gallons purchased; and
- (i) amount of state motor fuel tax paid.

(3) Original records supporting the refund claim must be maintained by the governmental entity for three years following the year of refund.

**R865-13G-15. Reduction in Motor Fuel Tax for Distributors Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-201.**

(1) The purpose of this rule is to provide procedures for administering the reduction of motor fuel tax authorized under Section 59-13-201.

(2) The reduction shall be in the form of a refund.

(3) The refund shall be available only for motor fuel:

(a) delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

(b) for which Utah motor fuel tax has been paid.

(4) The refund shall be available to a motor fuel distributor that is licensed as a distributor with the Office of the Navajo Tax Commission.

(5) The refund application may be filed on a monthly basis on the Utah Application for Fuel Tax Refund, form TC-116.

(6) Original records supporting the refund claim must be maintained by the distributor for three years following the year of refund. These records include:

- (a) proof of payment of Utah motor fuel tax;
- (b) proof of payment of Navajo Nation fuel tax;
- (c) documentation that the motor fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

(d) a completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with the required schedules and manifests.

**R865-13G-17. Motor Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-203.1.**

(1) The holder of a license issued under Section 59-13-203.1 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 motor fuel 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 motor fuel tax license that has been determined invalid under Subsection (3).
- (5) The holder of a license issued under Section 59-13-203.1 shall be responsible for any motor fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

**R865-13G-18. Definition of Statewide Average Rack Price of a Gallon of Motor Fuel Pursuant to Utah Code Ann. Sections 59-13-201 and 59-13-210.**

- (1) For purposes of the fuel tax imposed under Section 59-13-201, "statewide average rack price of a gallon of motor fuel" shall be determined by calculating the average of the Salt Lake City and Cedar City terminal prices of the average daily average net closing price of a gallon of branded regular, 10% ethanol, 9.0 Reid Vapor Pressure unleaded motor fuel for each terminal.
- (2) Pursuant to Section 59-13-301, the tax rate calculated using the statewide average rack price of a gallon of motor fuel shall be the tax rate for special fuel.

**KEY: taxation, motor fuel, gasoline, environment**

October 22, 2015	59-13-201
Notice of Continuation November 10, 2016	59-13-202
	59-13-203.1
	59-13-204
	59-13-208
	59-13-210
	59-13-404

**R865. Tax Commission, Auditing.**  
**R865-14W. Mineral Producers' Withholding Tax.**  
**R865-14W-1. Mineral Production Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-101 through 59-6-104.**

(1) Definitions.

(a) "Working interest owner" means any person who is the owner of an interest in oil, gas, other hydrocarbon substances, or all other metalliferous and nonmetalliferous minerals who is burdened with a share of the expense of developing and operating the property.

(b) "First purchaser" means the first person to pay for production after it is extracted from deposits in this state.

(c) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this state.

(d) "Producer" as defined in Section 59-6-101 includes any non-operating working interest owner that makes payments to persons having an interest in minerals produced or extracted from deposits in this state.

(2) Advance mineral production payments that relate to, refer to, or concern production are subject to the mineral production tax withholding requirements.

(3) Each producer who disburses funds that are owed to any person owning a working interest, a royalty interest, overriding royalty interest, production payment or any other interest in minerals produced in this state, is subject to the withholding requirement of Section 59-6-102.

(4) Withholding requirements on further distributions are as follows:

(a) Unless otherwise provided by statute, each producer who disburses funds to any producer, working interest owner or any other interest owner must withhold five percent of the gross payment due if that producer or any other interest owner does not make further distributions. For producers or any other interest owners making further distributions, the procedures outlined in Subsection (4)(b) must be followed.

(b) The working interest owner or producer who makes further distributions must be licensed to withhold on the disbursements and is responsible for remitting the tax withheld each quarter. Upon approval by the Auditing Division of the Tax Commission, a working interest owner or producer who makes further distributions of the mineral production proceeds may furnish an exemption certificate approved by the Tax Commission to the producer or first purchaser.

(c) If an exemption certificate approved by the Auditing Division of the Tax Commission is not received, withholding is required.

(5) If a mineral is taken in kind by an interest owner of a mineral production property, the initial withholding responsibility rests with the first purchaser who receives the mineral. A person taking a mineral under an exchange agreement with the interest owner is considered to be the first purchaser and is subject to the requirement of withholding and remitting the tax on any payments made to the interest owner.

(6) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit must be claimed for the tax withheld on a Utah individual income tax return or a Utah corporation franchise tax return.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the Internal Revenue Code and are Utah residents, members of a Utah limited liability company, or members of a partnership doing business in this state may claim credit for the amount shown on the federal schedule K-1 or the

Utah schedule K-1 as their percentage share of the tax withheld from Utah mineral production payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. The beneficiaries may claim credit for the amount shown by the fiduciary on the federal schedule K-1 or the Utah schedule K-1 as their percentage share of the tax withheld from Utah mineral production payments.

(d) A corporation or individual taxpayer filing on a fiscal year ending other than December 31, must claim a credit for the withholding tax shown on Form TC-675R on the corporation franchise or individual income tax return required to be filed during the year following the December closing period of the Form TC-675R.

(7) The return prescribed by the Tax Commission for reporting the information specified in Section 59-6-103 may be obtained from the Tax Commission.

(8) If the producer, operator, or first purchaser fails to withhold the tax required under Section 59-6-102, and thereafter, the income subject to withholding is reported, and the resulting tax is paid by the recipient, any tax required to be withheld shall not be collected from the producer, operator, or first purchaser. However, the producer, operator, or first purchaser shall remain subject to penalties and interest on the total amount of taxes that should have been withheld.

**KEY: taxation, mineral resources, withholding tax**  
**August 25, 2011** **59-6-101**  
**Notice of Continuation November 10, 2016** **through**  
**59-6-104**

**R865. Tax Commission, Auditing.****R865-150. Oil and Gas Tax.****R865-150-1. Oil and Gas Severance Tax Pursuant to Utah Code Ann. Sections 59-5-102 and 59-5-104.**

## (1) Definitions

(a) "Person" means any individual, partnership, company, joint stock company, association, receiver, trustee, executor, administrator, guardian, fiduciary agent or other representative of any kind.

(b) "Operator" means any person engaged in the business of operating oil or gas wells, whether as a working interest owner, an independent contractor, or otherwise. An operator who is also a working interest owner shall be referred to as a producer.

(2) For purposes of filing the statement required under Section 59-5-104, if working interest owners engage in a unitization agreement or other business arrangement in which someone other than themselves are conducting the operations of an oil or gas lease.:

(a) Each working interest owner who receives a share of production in kind must file the statement required in Section 59-5-104. The operator of the well must inform the commission, on forms provided by the commission, of any party taking production in kind.

(b) A working interest owner may enter into an agreement with the lease operator requiring the lease operator to distribute the proceeds from the purchase or sale of oil and gas production to the working interest owners and any other parties claiming an interest through them.

(c) Working interest owners who are parties to the unitization agreement or other business arrangement may designate the operator as the person who shall file the statement on behalf of all working interest owners. For these arrangements to be recognized by this state, the designated operator must also be empowered to deduct, from the share of each interest owner, the tax imposed under Title 59, Chapter 5, Part 1.

(d) If a designated operator fails to file the tax return, or files a false, fraudulent, or otherwise inaccurate statement, or fails to pay the full amount of the tax due, the primary and ultimate liability for the statement and the tax shall rest solely upon the producers or interest owners.

(i) If the designated operator fails to file and pay the tax due, the state shall hold a hearing and is no longer bound by any arrangement between the parties.

(ii) Nothing in Subsections (2)(b) through (d) shall deprive the commission of the authority to require each working interest owner to file the required statement where the commission determines that a jeopardy situation exists.

(3) A person entering into an agreement during the taxable year shall file a return covering independent production prior to entering the agreement.

**R865-150-2. Stripper Well Exemption Pursuant to Utah Code Ann. Sections 59-5-101 and 59-5-102.**

A. The annual stripper well exemption applies to producing oil wells and producing gas wells. The exemption cannot be applied to one product but not to another on the same well.

1. If a well is classified as an oil well and has associated gas production, the stripper classification is measured on the basis of oil production only.

2. If an oil well does not qualify as a stripper well on the basis of oil production, all production is taxable regardless of the amount of associated gas produced.

B. For purposes of applying the stripper exemption to oil wells, the twelve consecutive month period need not fall within a calendar year. For example, a well may produce above stripper production up until March of a year and then fall to

stripper production beginning in April of the same year. Using April 1 as the beginning measuring point for average daily production, the well may qualify as a stripper from April 1 of the first year to March 31 of the following year. This means that for the first year, January through March production would be subject to the tax, and the next nine months of production would be exempt. The remaining three months of the exempt period falls within the second year.

C. The average daily production, for purposes of determining if an oil well is a stripper well, is based on the maximum rate of flow for the days the well actually produces. Days for which the well is shut in, or not otherwise producing, may not be included in determining the average daily production.

D. The average daily production, for purposes of determining if a gas well is a stripper well, shall be based on the maximum efficient rate of flow for the days the well actually produces. Days for which the well is shut in, or not otherwise producing, may not be included in determining average daily production.

1. If a gas well qualifies as a stripper well, the exemption begins on the first day of the 90-day measuring period and continues for the next 12 months. The annual exemption applies regardless of daily production following the 90-day measuring period.

**KEY: taxation, petroleum, petroleum industries****October 13, 2011****Notice of Continuation November 10, 2016****59-5-101****through****59-5-115**

**R865. Tax Commission, Auditing.****R865-16R. Severance Tax.****R865-16R-1. Valuation of Metalliferous Minerals for Severance Tax Purposes Pursuant to Utah Code Ann. Section 59-5-203.**

A. Gross proceeds under Section 59-5-203 means the total consideration received by the taxpayer for the sale of metals or metalliferous minerals, including premiums, bonuses, subsidies, or non-cash consideration, with no deductions.

B. The authority for market prices under Subsection 59-5-203(1)(b) shall be an average daily price in U.S. markets, as listed in Metals Week or other market listing, for the quarter in which the products are consumed or shipped out of state. The taxpayer is responsible for calculating average daily price for each tax quarter from the market listing.

C. Valuation of metals or metalliferous minerals under Section 59-5-203(1)(c) and (1)(d) shall be determined as follows:

1. The gross value of ore shall equal the unit value of the first marketable product multiplied by the ratio of direct mining costs and divided by the total direct costs of mining, processing, and manufacturing to produce the first marketable product. This value is then multiplied by the recoverable units of the first marketable product contained in ores or concentrates. This gross value of ore is then reduced by the exemption provided for in 59-5-202(3) and in turn multiplied by the statutory rate of 80 percent to find the taxable value of ore.

2. Direct mining costs shall be those costs, including royalty payments, attributable to the extraction of minerals from their naturally occurring environment and transportation to the point of processing, use, or sale.

3. First marketable product means the first product or group of products produced by the taxpayer in the form or condition in which the product or products are first sold in significant quantities by the taxpayer or by others in the taxpayer's marketing area, provided that the metals or metalliferous mineral products are sold under a bona fide contract of sale between unaffiliated parties.

D. If the first marketable product is an ore or concentrate, an alternative method of valuation under this subsection may be used upon the mutual consent of the Tax Commission and the taxpayer. Under the alternative method, the gross value of metals or concentrates shall equal the unit value of the first marketable product multiplied by the recoverable units of metal or metalliferous minerals in ore or concentrates produced by the taxpayer during the tax period. The gross value of metals or concentrates is then reduced by the exemption provided for in 59-5-202(3) and in turn multiplied by the statutory rate for the applicable metal to find the taxable value of ore.

E. If a sale of metals or metalliferous minerals between affiliated companies is not a bona fide sale because the value received is not proportionate to the fair market value of the metals or metalliferous minerals, the minerals shall be valued using the methods described in B., C., and D. above, in that order.

**KEY: taxation, mineral resources**

**April 23, 1996**

**59-5-203**

**Notice of Continuation November 10, 2016**

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

**R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.**

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

**R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.**

(1) For purposes of this rule, "item" includes:

- (a) an admission;
- (b) a product transferred electronically;
- (c) a service; and
- (d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

- (a) separately states the tax exempt items on the invoice; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

- (a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

**R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.**

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of

business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;
2. of a change of character of the business; or
3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;
2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;
3. the person fails to renew its annual business license with the Department of Commerce; or
4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

**R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.**

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

**R865-19S-13. Confidential Nature of Returns Pursuant to**

**Utah Code Ann. Section 59-12-109.**

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

**R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.**

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or
2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

**R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.**

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

**R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.**

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in

connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

- (a) the application being performed;
- (b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

**R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.**

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

**R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.**

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

**R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.**

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for

purposes of Subsections 59-12-104(13) and (17).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

**R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.**

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

**R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.**

(1)(a) Subject to Subsection (1)(b), a lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(b) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

- (i) optional; and
- (ii) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

- (a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and
- (b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

**R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether

such charge is designated as a cover charge, minimum charge, or any such similar charge.

(b) This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

**R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.**

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

**R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for

industrial use of fuels pursuant to Section 59-12-104.

**R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.**

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

**R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.**

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not

regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

**R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.**

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

**R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.**

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

**R865-19S-42. Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-104.6.**

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

(2) A purchase made by the state, its institutions, or its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

(3) A purchase is considered made by the state, its institutions, or its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with the employee's own funds and is reimbursed by the state or local entity, that purchase is not made by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and  
(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

**R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.**

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

**R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.**

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

**R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.**

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;
2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or
3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

**R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.**

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

- (a) to produce or care for agricultural products that are for sale;
- (b) to feed or care for working dogs and working horses in agricultural use;
- (c) to feed or care for animals that are marketed.
- (3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.
- (4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

**R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;
2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

**R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.**

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

**R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.**

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

**R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.**

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

**R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

**R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

- (a) "Construction materials" include items of tangible

personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

#### **R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.**

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

#### **R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.**

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

#### **R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987

Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of

people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of

people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

**R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.**

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

**R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.**

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the

marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

**R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.**

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

**R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.**

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

**R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

**R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

**R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.**

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and

when it takes place.

**R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.**

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

**R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.**

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed \$1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

**R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.**

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

**R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

**R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:

(i) service plan charges for labor are not taxable; and

(ii) service plan charges for parts are taxable unless those parts are exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(4) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

**R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.**

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

**R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.**

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

**R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.**

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created

upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

**R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.**

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

**R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.**

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

**R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.**

A. Definitions:

1. "Cash equivalent" means either:

- cash;
- wire transfer; or
- cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a \$50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The

EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

#### **R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.**

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

#### **R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.**

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

**R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.**

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;
2. The person identifies himself as a purchasing agent for the government entity;
3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;
4. The transaction is approved by the government entity; and
5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

**R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-211.**

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

- (i) a purchaser uses computer software;
- (ii) there is not a transfer of a copy of the computer software to the purchaser; and
- (iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

(i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or

(ii) if the seller is required to collect and remit tax to the commission for the purchase, and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in

accordance with Subsections 59-12-211(4) and (5); or

(iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

**R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.**

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

**R865-19S-94. Service Charges, Tips, Gratuities, Cover Charges, and Other Similar Charges Pursuant to Utah Code Ann. Section 59-12-103.**

(1)(a) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on service charges, tips, gratuities, cover charges, or other similar charges included on a patron's bill that are required to be paid.

(b) Voluntary amounts left on the table or added to a credit card charge slip are not subject to sales tax.

(2) A service charge, tip, gratuity, cover charge, or other similar charge that a restaurant, cafe, club, private club, or similar business includes on a patron's bill is presumed to be required unless:

(a) language on the front of the bill states that the service charge, tip, gratuity, cover charge, or other similar charge is voluntary and may be increased or decreased by the patron; and

(b) the language described in Subsection (2)(a) is in the same font size as the service charge, tip, gratuity, cover charge, or other similar charge that the restaurant, cafe, club, private club, or similar business included on the bill.

(3) Charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

**R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.**

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

**R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.**

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

- (a) inspected in this state; or
- (b) tested for functionality in this state.

**R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

**R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.**

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

**R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.**

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

**R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.**

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt

electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

**R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.**

(1) Definitions.

(a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

(b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

(2) Except as provided in Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

(3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

(4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

(5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

(6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

(7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the commission:

- (a) on forms provided by the commission, and
- (b) at the time and in the manner sales and use tax is remitted to the commission.

(8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

- (a) the name and address of the user of the taxable energy;
- (b) the volume of taxable energy delivered to the user; and
- (c) the entity from which the taxable energy was purchased.

(9) The information required under Subsection (8) shall be provided to the commission:

(a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an

annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

**R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.**

A. The \$75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

**R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.**

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

**R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

- (a) medical services;
- (b) boarding services; or
- (c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

**R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.**

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or

consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

**R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.**

(1) Graphic design services are not subject to sales and use tax:

(a) if the graphic design is the object of the transaction; and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

**R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.**

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

**R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.**

A. "Clothing" includes:

1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;

14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;
17. hats and caps;
18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:

1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:

a) knitting needles;

b) patterns;

c) pins;

d) scissors;

e) sewing machines;

f) sewing needles;

g) tape measures; and

h) thimbles; and

5. sewing materials that become part of clothing, including:

a) buttons;

b) fabric;

c) lace;

d) thread;

e) yarn; and

f) zippers.

**R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.**

"Protective equipment" includes:

A. breathing masks;

B. clean room apparel and equipment;

C. ear and hearing protectors;

D. face shields;

E. hard hats;

F. helmets;

G. paint or dust respirators;

H. protective gloves;

I. safety glasses and goggles;

J. safety belts;

K. tool belts; and

L. welders gloves and masks.

**R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.**

"Sports or recreational equipment" includes:

A. ballet and tap shoes;

B. cleated or spiked athletic shoes;

C. gloves, including:

(i) baseball gloves;

(ii) bowling gloves;

(iii) boxing gloves;

(iv) hockey gloves; and

(v) golf gloves;

D. goggles;

E. hand and elbow guards;

F. life preservers and vests;

G. mouth guards;

H. roller skates and ice skates;

I. shin guards;

J. shoulder pads;

K. ski boots;

L. waders; and

M. wetsuits and fins.

**R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.**

A. The computation of sales and use tax must be:

1. carried to the third place; and

2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:

1. item basis; or

2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

**R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.**

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and

2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and

2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

**R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.**

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization

under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

- (a) land;
- (b) buildings;
- (c) raw materials;
- (d) supplies;
- (e) film;
- (f) services;
- (g) transportation;
- (h) gas, electricity, and other fuels;
- (i) admissions or user fees; and
- (j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

- (a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and
- (b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

**R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.**

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

**R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104.**

(1) Definitions.

(a) "Establishment" means a unit of operations, that is

generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

**R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.**

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

**KEY: charities, tax exemptions, religious activities, sales tax April 14, 2016**

<b>April 14, 2016</b>	<b>9-2-1702</b>
<b>Notice of Continuation November 10, 2016</b>	<b>9-2-1703</b>
	<b>10-1-303</b>
	<b>10-1-306</b>
	<b>10-1-307</b>
	<b>10-1-405</b>
	<b>19-6-808</b>
<b>26-32a-101 through 26-32a-113</b>	<b>59-1-210</b>
	<b>59-12</b>
	<b>59-12-102</b>
	<b>59-12-103</b>
	<b>59-12-104</b>
	<b>59-12-105</b>
	<b>59-12-106</b>
	<b>59-12-107</b>
	<b>59-12-108</b>
	<b>59-12-118</b>
	<b>59-12-301</b>
	<b>59-12-352</b>
	<b>59-12-353</b>



**R865. Tax Commission, Auditing.****R865-20T. Tobacco Tax.****R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.**

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

**R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.**

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

**R865-20T-5. Bonding Requirements For Cigarette and Tobacco Products Dealers Pursuant to Utah Code Ann. Sections 59-14-201 and 59-14-301.**

(1) Dealers who only sell tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

(2) Subject to Subsections (3) and (4), the commission shall calculate the amount of a bond required under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing ("Chapter 14"), on the basis of:

(a) for an applicant:

(i) commission estimates of the applicant's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the applicant;

(B) a fiduciary of the applicant; and

(C) a person for which the applicant is required to collect, truthfully account for, and pay over a tax under Chapter 14; and

(b) for a licensee:

(i) commission estimates of the licensee's tax liability under Chapter 14; and

(ii) the amount of a tax owed under Chapter 14 by any of the following:

(A) the licensee;

(B) a fiduciary of the licensee; and

(C) a person for which the licensee is required to collect, truthfully account for, and pay over a tax under Chapter 14.

(3) If the commission determines it is necessary to ensure compliance with Chapter 14, the commission may require a licensee to increase the amount of a bond filed with the commission.

(4) A licensee that does not purchase cigarette stamps on credit may not make any single purchase of cigarette stamps that exceeds 90% of the amount of the bond the licensee has filed with the commission.

**R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.**

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;

2. name and address of customer;

3. address to which delivered;

4. quantity and type of product sold.

**R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.**

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

**R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.**

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;

2. the person to whom the cigarettes were delivered;

3. place of delivery;

4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

**R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.**

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of

that information to the Tax Commission.

**R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.**

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette stamp that has previously been affixed to another pack of cigarettes.

**R865-20T-13. Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.**

(1) Moisture content, for purposes of ascertaining whether a tobacco product meets the definition of moist snuff, shall be the moisture content annually reported by the manufacturer to the United States Department of Health and Human Services.

(2)(a) Tax on moist snuff shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the taxable moist snuff by the tax rate for moist snuff required under Section 59-14-302.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

(3) The calculation described in Subsection (2) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection (2) is greater than 4.

**R865-20T-14. Directory of Cigarettes Approved for Stamping Pursuant to Utah Code Ann. Sections 59-14-603 and 59-14-607.**

(1) The commission shall update the directory of cigarettes approved for stamping required under Section 59-14-603 on the first business day of each month.

(2) Additions or modifications of brand families shall be by supplemental certification delivered to the commission by the manufacturer no later than 30 days before the next scheduled monthly update of the directory.

(3) Approved brand family additions or modifications shall be made to the directory on the next scheduled monthly update only if the manufacturer submitted a complete and accurate supplemental certification with requested additions or modifications 30 days prior to the scheduled monthly directory update.

(4) If the manufacturer does not submit a complete and accurate supplemental certification to the commission within 30 days of the next scheduled monthly update, approved brand family additions or modifications will not be made to the directory until the following monthly update.

(5) Directory updates between the regularly scheduled monthly updates are generally only permitted to correct errors or omissions in the directory made by the commission.

**KEY: taxation, tobacco products**

**August 27, 2015**

**Notice of Continuation November 10, 2016**

59-14-102  
59-14-202  
59-14-203.5  
59-14-204  
through  
59-14-206  
59-14-210  
59-14-212  
59-14-301  
through  
59-14-303  
59-14-401  
59-14-404  
59-14-603  
59-14-607

**R865. Tax Commission, Auditing.**

59-12-104

**R865-21U. Use Tax.**

59-12-118

**R865-21U-1. Nature of Use Tax Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

**R865-21U-2. Rules Common to Both Sales and Use Taxes Pursuant to Utah Code Ann. Section 59-12-118.**

A. The use tax is a complement to the sales tax and the rules promulgated are common to both taxes.

**R865-21U-6. Liability of Purchasers for Payment of Tax Pursuant to Utah Code Ann. Section 59-12-107.**

(1) For purposes of this section:

(a) "Income tax return" means a tax return filed under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) Title 59, Chapter 10, Individual Income Tax Act, except for Title 59, Chapter 10, Part 4.

(b) "Sales tax license" means a license issued under Title 59, Chapter 12, Sales and Use Tax Act.

(2) A purchaser of an item that is subject to sales and use tax must account for the tax liability by paying the tax:

(a) to the seller from whom the item was purchased if the seller has a sales tax license; or

(b) directly to the commission if the seller from whom the item was purchased does not collect the sales tax from the purchaser.

(3) A purchaser that is subject to Subsection (2)(b) shall:

(a) if the purchaser has a sales tax license pay the tax on the purchaser's sales and use tax return; or

(b) if the purchaser does not have a sales tax license, pay the tax on the purchaser's income tax return.

(4)(a) A purchaser paying the tax to the commission under Subsection (3)(b) shall compute the tax using the rates provided in the income tax instructions for the address of the purchaser as shown on the income tax return.

(b) If a purchaser is not required to file an income tax return, the purchaser shall:

(i) report and pay the tax on the income tax return the purchaser would otherwise be required to file; and

(ii) include with the return a statement stating that no income tax is due and that the return is submitted for payment of use tax only.

**R865-21U-16. Property Sold or Used In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-107.**

A. The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.

B. The fact that tangible personal property is used in this state in interstate or foreign commerce following its storage in this state does not exempt the storage of the property from the tax. The fact that tangible personal property is used in this state in interstate or foreign commerce does not exempt the use of the property from the tax.

**KEY: taxation, use tax**

**August 27, 2012**

**59-12-103**

**Notice of Continuation November 10, 2016**

**59-12-107**

**R867. Tax Commission, Collections.****R867-2B. Delinquent Tax Collection.****R867-2B-1. Collection of Penalty Pursuant to Utah Code Ann. Section 59-1-302.**

(1) The commission may impose a lien upon the real and personal property of a person liable for a penalty under Section 59-1-302.

(2) The statute of limitations for imposing liens under Subsection (1) is three years from the date of the penalty assessment.

**R867-2B-3. Sale of Seized Property Pursuant to Utah Code Ann. Section 59-1-703.**

A. The Commission must approve all sales of seized property sold, pursuant to Section 59-1-703(8), prior to the Commission's final decision on the appeal.

B. The taxpayer will be notified in writing of the intent to sell the seized property at least ten days prior to the sale except when the seized property is perishable. Perishable property may be sold immediately.

C. Expenses of retaining the seized property will be determined by taking into account such things as the appraised value of the property, the storage costs for the projected appeal period, conservation, depreciation, and maintenance.

D. A taxpayer may stop a sale of seized property by posting a bond with the Tax Commission, equal to the appraised value of the property, within three days of the notice of sale.

**KEY: taxation, controlled substances, seizure of property, drug stamps****July 26, 2012****59-1-302****Notice of Continuation November 10, 2016****59-1-706****59-1-701****59-1-702****59-1-703****59-1-707****59-19-104****59-19-105****59-19-107**

**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 pre-stamped 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 pre stamped 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.

**KEY: taxation, motor vehicles, aircraft, license plates**

**July 14, 2016** 41-1a-102

**Notice of Continuation November 10, 2016** 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

41-1a-420

41-1a-421

41-1a-422

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**

**Notice of Continuation November 10, 2016**

**41-1a-712**

**41-3-105**

**41-3-201**

**41-3-202**

**41-3-210**

**41-3-301**

**41-3-302**

**41-3-305**

**41-3-503**

**41-3-505**

**41-3-506**

**41-3-507**

**R884. Tax Commission, Property Tax.****R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

**R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.****A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

#### B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

- b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

- c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

- d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

- a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

- b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

- 1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

- 2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

- a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

- b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

#### **R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.**

(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 complete courses 501, 502, and 505;
- (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
- (iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 101, 103, 501, and 503; and
- (ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 504;
- (ii) successfully complete a comprehensive valuation practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be

borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

**R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;  
b) acquisition of personal property; or  
c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.**

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value

based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the 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 adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b)(c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

**R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.**

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- (a) a description of the leased or rented equipment;
- (b) the year of manufacture and acquisition cost;
- (c) a listing, by month, of the counties where the equipment has situs; and
- (d) any other information required.

(3) For purposes of this rule, situs is established when

leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

**R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.**

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

**R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

**R884-24P-33. 2017 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
16	69%
15	40%
14 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
16	88%
15	78%
14	67%
13	57%
12	47%
11	36%
10	24%
09 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
16	82%
15	67%
14	51%
13	34%
12 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
16	89%
15	80%
14	71%
13	61%
12	52%
11	43%
10	32%
09	22%
08 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 2017 percent good applies to 2017 models purchased in 2016.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
17	90%
16	70%
15	64%
14	59%
13	53%
12	48%
11	42%
10	36%
09	31%
08	25%
07	20%
06	15%
05	10%
04 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
16	90%
15	84%
14	76%
13	68%
12	61%
11	54%
10	45%
09	37%

08	29%
07	20%
06 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 e x c h a n g e r s ;

- (II) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank 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
16	90%
15	84%
14	76%
13	68%
12	61%
11	54%
10	45%
09	37%
08	29%
07	20%
06 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
16	92%
15	87%
14	81%
13	75%
12	70%
11	65%
10	57%
09	51%
08	46%
07	40%
06	34%
05	27%
04	19%
03 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
16	62%
15	46%
14	21%
13	9%
12 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) 2017 model equipment purchased in 2016 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
16	49%
15	46%
14	43%
13	40%
12	38%
11	35%
10	32%
09	29%

08	26%
07	24%
06	21%
05	18%
04	15%
03 and prior	13%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2017 percent good applies to 2017 models purchased in 2016.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
17	90%
16	71%
15	67%
14	63%
13	59%
12	56%
11	52%
10	48%
09	44%
08	40%
07	37%
06	33%
05	29%
04	25%
03	22%
02	18%
01 and prior	14%

(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
16	47%
15	34%
14	24%
13	15%
12 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;
  - (H) solar panels and supporting equipment; and
  - (I) pipe laid in or affixed to land.
- (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
16	94%
15	90%
14	86%
13	81%
12	79%
11	76%
10	70%
09	66%
08	64%
07	60%
06	59%
05	54%
04	49%
03	43%
02	36%
01	29%
00	22%
99	15%
98 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 2017 percent good applies to 2017 models purchased in 2016.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
17	90%

16	66%
15	64%
14	61%
13	59%
12	57%
11	54%
10	52%
09	50%
08	47%
07	45%
06	43%
05	41%
04	38%
03	36%
02	34%
01	31%
00	29%
99	27%
98	24%
97	20%
96 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
16	92%
15	84%
14	79%
13	72%
12	65%
11	59%
10	53%
09	45%
08	39%
07	33%
06	26%
05	18%
04 and prior	10%

(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 2017 percent good applies to 2017 models purchased in 2016.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
17	95%
16	87%
15	83%
14	79%
13	75%
12	71%
11	67%
10	63%
09	59%
08	55%
07	51%
06	47%
05	41%
04	36%
03	30%
02	25%
01 and prior	17%

(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

i n s t a l l a t i o n .

(ii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
16	94%
15	88%
14	82%
13	77%
12	71%
11	65%
10	59%
09	54%
08	48%
07	42%
06	36%
05 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
16	82%
15	67%
14	51%
13	35%
12	19%
11 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
16	97%
15	95%
14	92%
13	90%
12	87%
11	84%
10	82%
09	79%
08	77%
07	74%
06	71%
05	69%
04	66%
03	64%

02	61%
01	58%
00	56%
99	53%
98	51%
97	48%
96	45%
95	43%
94	40%
93	38%
92	35%
91	32%
90	30%
89	27%
88	25%
87	22%
86	19%
85	17%
84	14%
83	12%
82 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
16	75%
15	50%
14	25%
13 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2017.

**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 homestead.
- (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

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

(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

(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

(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

(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

(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

(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 leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

**R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.**

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

- (i) the name of the taxpayer awarded the judgment;
- (ii) the appeal number of the judgment; and
- (iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must

provide the commission the following:

- (i) a copy of all judgment levy newspaper advertisements required;
  - (ii) the dates all required judgment levy advertisements were published in the newspaper;
  - (iii) a copy of the final resolution imposing the judgment levy;
  - (iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and
  - (v) any other information required by the commission.
- (7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

**R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

- 1. share-down of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
- 2. time series models, weighted 40 percent; and
- 3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

**R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

- 1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
- 2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

**R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.**

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

- 1. vintage vehicles;
- 2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
- 3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
- 4. mobile and manufactured homes;
- 5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial

vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

- 1. in the case of an original registration, registers the vehicle; or
- 2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

- 1. Divide the system value by the book value to determine the market to book ratio.
- 2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article

XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.**

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or

the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.**

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are

necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to

current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is  $CF/(k-g)$ , where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is  $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$ , where  $k(e)$  is the cost of equity and  $R(f)$  is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of

the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the

basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of

an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

#### **R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.**

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

#### **R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.**

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

#### **R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.**

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

- a) brought back into the state; or
- b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and
2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and
2. No portion of the assessed tax may be transferred to the subsequent county.

**R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. 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  
November 7, 2016 Art. XIII, Sec 2  
Notice of Continuation November 10, 2016**

- 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

**R916. Transportation, Operations, Construction.****R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R916-5-1. Purpose.**

The purpose of this rule is to comply with Section 72-6-107.5 and establish the requirements and procedures a contractor, subcontractor, consultant and subconsultant must follow to demonstrate they will maintain an offer of health insurance as required by Section 72-6-107.5. This rule also establishes penalties for intentional violations of Section 72-6-107.5.

**R916-5-2. Authority.**

This rule is authorized under Section 72-6-107.5 which requires the Utah Department of Transportation to make rules related to health insurance in certain design and construction contracts.

**R916-5-3. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-107.5

(2) In addition:

(a) "Executive Director" means the Executive Director of the Department of Transportation, including, unless otherwise stated, the Executive Director's duly authorized designee.

(b) "Department" means the Department of Transportation established pursuant to Section 72-1-201.

(c) "Employee(s)" is as defined in 72-6-107.5 and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than that the use of the term employee for purposes of State of Utah Workers' Compensation laws.

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

**R916-5-4. Applicability of Rule.**

(1) Except as provided in Subsection (2) below, this rule applies to all contracts entered into by the Department on or after July 1, 2009, and is applicable to a prime contractor if its contract is in the amount of \$2,000,000.00 or greater at the original execution of the contract, and to a subcontractor if its subcontract is in the amount of \$1,000,000.00 or greater at the original execution of the contract.

(2) This rule does not apply if:

(a) the application of this rule jeopardizes the receipt of federal funds;

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

(c) the contract is an emergency procurement; or

(d) the rule is in conflict with federal law.

(3) This rule does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R916-5-4(1).

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

**R916-5-5. Contractors or Consultants to Comply with Section 72-6-107.5.**

All contractors, subcontractors, consultants or subconsultants that are subject to the requirements of Section 72-6-107.5 shall comply with all the requirements, and be subject to the penalties and liabilities of Section 72-6-107.5.

**R916-5-6. Not Basis for Protest, Suspension, Disruption, or Termination Design or Construction.**

(1) The failure of contractors, subcontractors, consultants, or subconsultants to comply with Section 72-6-107.5:

(a) may not be the basis for a protest or other action from

a prospective bidder, offeror, or contractor or consultant under Section 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Part 16, Legal and Contractual Remedies; and

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

(2) A contractor who is unable to demonstrate compliance upon submission of the executed contract, signed by the successful bidder, may be declared non-responsive and the Department may award the contract to the next lowest responsive bidder.

(3) A consultant who is unable to demonstrate compliance within 14 calendar days of being ranked first during the consultant selection process may be declared non-responsive and the Department may enter negotiations with the new first-ranked responsive consultant.

**R916-5-7. Requirements and Procedures a Contractor or Consultant Must Follow.**

(1) A contractor, or consultant, subcontractors or subconsultants must comply with the following requirements and procedures, and demonstrate, no later than the time of execution of the contract, compliance with Section 72-6-107.5:

(a) By providing a written certification to the Executive Director that the contractor, consultants, subcontractors, and subconsultants have and will maintain for the duration of the contract an offer of qualified health insurance coverage for the employees who live and/or work within the State, along with their dependents; and

(b) the contractor or consultant shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors or subconsultants at any tier that are subject to the requirements of this rule.

(c) The contractor shall: (i) Include a requirement in the applicable subcontract and certify to the Department that the subcontractor must 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

(ii) certify to the Department 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.

(2) Recertification. The Executive Director shall have the right to request a recertification by the contractor or consultant by submitting a written request to the contractor or consultant, and the contractor or consultant shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor or consultant be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection (1) of 72-6-107.5 is met by the contractor or consultant if the contractor or consultant provides the Executive Director with a written statement of actuarial equivalency, which is no more than one year old, from either the Utah Insurance Department, an actuary selected by the contractor or the contractor's insurer, an actuary selected by the consultant or the consultant's insurer, or an underwriter who is responsible for developing the employer groups premium rates.

(a) For purposes of this rule, actuarial equivalency, or greater is achieved by meeting or exceeding the requirements of qualified health insurance coverage as defined in Subsection 72-6-107.5(1)(c). The commercially equivalent benchmark, provided by the Department of Health, referred to in Subsection 72-6-107.5(1)(c), may be found at: <http://dfcm.utah.gov/downloads/Health%20Insurance%20Ben>

chmark.pdf.

(4) The health insurance must be available upon the first day of the calendar month following the initial 90 days from the date of hire.

(5) Consultant Compliance Process. Consultants who are subject to this rule must demonstrate compliance with this rule in their initial Financial Screening Application. The consultant's will then be required to demonstrate the offer of health insurance that meets the requirements outlined in Section 72-6-107.5. During the procurement process and no later than the execution of the contract with the consultant, the consultant will confirm the prime is still in compliance with this rule and the subconsultants of the consultant will certify through their prime consultant they meet the requirements of this rule. The written contract will contain a provision where the consultant confirms compliance with this rule by both the consultant and applicable subconsultants.

(6) Contractor Compliance Process. Contractors who are subject to this rule must demonstrate compliance with this rule. When a contract is written, contractors will confirm the prime contractor is in compliance with this rule and their subcontractors will certify through their contractor that they meet the requirements of this rule. The written contract shall contain a provision where the contractor confirms compliance with this rule by both the contractor and applicable subcontractors.

(7) The contractor must be in compliance at the time the contract is executed. Notwithstanding any prequalification of a contractor, subcontractor, consultant or subconsultant that is subject to this rule, the contractor subcontractor, consultant or subconsultant must agree to the language in the executed contract that requires the contractor to be in compliance with this rule at the time of the execution of the contract and throughout the duration of the executory contract.

(8) The contractor's compliance is subject to an audit by the Department or the Office of the Legislative Auditor General.

#### **R916-5-8. Department Hearing and Penalties.**

(1) Hearing. Any hearing regarding the failure to comply with this rule shall be held in accordance with the Utah Administrative Procedures Act and rule R907-1 unless specifically stated otherwise in a governing statute.

(2) Penalties. The penalties that may be imposed if a contractor, consultant, subcontractor or subconsultant, at any tier intentionally violates this rule include:

(a) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation, regardless of which tier the contractor or subcontractor is involved;

(b) a six-month suspension of the contractor, subcontractor, consultant or subconsultant from entering into future contracts with the state upon the second violation, regardless of which tier the contractor or subcontractor is involved;

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

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

(e) A prime contractor or consultant will not be subject to penalties for the failure of a subcontractor or subconsultant to meet the requirement of maintaining their offer of qualified health care coverage.

#### **R916-5-9. Does Not Create Any Contractual Relationship**

#### **With Any Subcontractor or Subconsultant.**

Nothing in this rule shall be construed as to create any contractual relationship whatsoever between the Department or the State with any subcontractor or subconsultant at any tier.

**KEY: contracts, health insurance, health insurance in state contracts, health reform**

**November 8, 2016**

**72-6-107.5**

**Notice of Continuation September 12, 2014**

**R930. Transportation, Preconstruction.****R930-2. Public Hearings.****R930-2-1. Definitions.**

- (1) "UDOT" means Utah Department of Transportation.
- (2) "FHWA" means Federal Highway Administration.

**R930-2-2. Coordination with Other Laws and Regulations.**

(1) In order to promote greater public involvement in the highway program the Utah Department of Transportation will conduct public hearings or afford opportunities for public hearings on highway projects in accordance with state and federal laws. Hearing procedures contained in 23 CFR 771, 40 CFR Parts 1500-1508 and 23 USC 128, Public Hearings are herewith incorporated by reference.

(2) The provisions of R930-2 may be waived by the Executive Director of the Utah Department of Transportation or, on Federal-aid projects, the Federal Highway Administrator if it is determined that the construction of a project is urgently needed because of a national emergency, a natural disaster or a catastrophic failure.

**R930-2-3. When Hearings are Held or Opportunities Afforded.**

Public hearings will be held or an opportunity for public hearing afforded on all highway projects where the project is on new location; where the project would have a substantially different social, economic or environmental effect; or where the project would essentially change the layout or function of connecting roads or streets. Uniform public hearing procedures shall be established and practiced in such a manner to insure that:

(1) The public is given ample notification of each public hearing and such public hearing will be held at a time and place convenient to those concerned.

(2) All interested persons shall have an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of development when flexibility to respond to those views still exists.

(3) The Utah Transportation Commission has an opportunity to consider the testimony or comments of any interested person or group having properly submitted such testimony or comments in accordance with published instructions.

**R930-2-4. Types of Hearings.**

The Utah Department of Transportation will hold location hearings to discuss general location alternatives and environmental documents, if any; design hearings to discuss the design details of a proposal; or combined location and design hearings. The Utah Department of Transportation may afford an opportunity for such hearings to satisfy this rule.

**R930-2-5. Notice - Project Public Hearings.**

On each public hearing, the UDOT Community Involvement Officer will arrange for at least two notices to be published in a daily newspaper with statewide circulation. The first notice shall be published at least two weeks prior to the public hearing. The second notice shall be published five to ten days prior to the public hearing. Additional notice may also be published in local weekly or shopper newspapers with circulation in the project area.

Notices shall contain the date, time and place of the public hearing in addition to identifying the proposed project or hearing subject in a clear and easily understood manner. Notices shall also contain information pertaining to the submission of testimony for those unable to attend the public hearing.

Affirmative consideration will be given to minorities in advertising all project public hearings, where appropriate.

**R930-2-6. Hearing Conduct.**

All public hearings held pursuant to this section will be conducted by a member of the Utah Transportation Commission, his representative, normally the UDOT Community Involvement Officer, or by a local official. The hearing shall be conducted impartially.

**R930-2-7. Notice - Opportunities for Public Hearings.**

When an Opportunity for Public Hearing is provided, the UDOT Community Involvement Officer will arrange for at least two notices to be published in newspaper(s) described in Section R930-2-5. The first notice shall provide at least fourteen days for a request for public hearing to be submitted. The second notice shall provide for at least seven days for a request for public hearing to be submitted. Notices shall identify the proposed project or subject in a clear and easily understood manner. Deadlines stated will be postmark deadlines.

Affirmative consideration will be given to minorities in advertising all project opportunities for public hearings, where appropriate.

**R930-2-8. Requests for Project Public Hearings.**

When an opportunity for a public hearing is advertised, any person with a social, economic or environmental interest in the project may request in writing that a public hearing be held, provided the request is received by the UDOT Community Involvement Officer in accordance with the published instructions and before the published deadline. Requests shall describe the interest of the requesting party and what the requesting party hopes to discuss or examine at the public hearing.

When questions exist concerning a request for a public hearing, the UDOT Community Involvement Officer may contact the requesting party/parties to further determine their interest in the project. If, as a result of such contact it is determined that a public hearing is not necessary, or that the requesting party might better satisfy their needs in another way, the requesting party may withdraw their request. In the event of such a withdrawal the UDOT Community Involvement Officer may cancel the hearing or proceed with the hearing if in his/her judgment the goals of the Department would be better served or the requested hearing has already been publicized.

**R930-2-9. Local Government Projects.**

Public Hearings conducted on local government projects must be held and conducted in accordance with R930-2.

**R930-2-10. Official Public Hearing Formats.**

The Utah Department of Transportation may conduct public hearings using either of two formats. One is the formal meeting format public hearing where the public gathers as an audience and the meeting is conducted by a moderator. The other format is the open forum hearing where the public is allowed to review information in an open house type setting and provisions are made to record any testimony individuals wish to give. A combination Open Forum/Formal Meeting or Formal Meeting/Open Forum hearing may also be conducted.

**R930-2-11. Transcript of Official Public Hearings.**

The Utah Department of Transportation will prepare and distribute a transcript of the public hearing for the consideration of the Utah Transportation Commission and other interested agencies. The transcript may include a map or drawing illustrating the proposed project, when available. When a formal hearing is held, a verbatim record of the hearing proceedings will be included. When an open forum hearing is held, a record of individual statements, if any, submitted by the attendees will be included. Also included will be petitions and

written testimony pertaining to the proposed improvements submitted in accordance with the instructions published in the legal notice or submitted at the public hearing. Extensive petition signature pages or form letter mass mailings shall be preserved but need not become a part of the distributed transcript. Instructions will provide that written statements received from the time the hearing was first advertised to a postmark deadline at least ten days following the hearing will be included in the transcript. If the tenth day following the hearing falls on a Sunday or holiday an additional day shall be added.

The UDOT Community Involvement Officer may restrict written testimony to that which is 8-1/2 inches by 11 inches in size and can be reproduced on a standard photocopy machine.

**R930-2-12. Other Meetings and Activities.**

The Utah Department of Transportation may hold information meetings, supplemental public hearings or conduct additional community involvement activities other than those required above when the goals and objectives of this rule can be better fulfilled.

**KEY: government hearings, highway hearings, public hearings**

1993

72-1-201

Notice of Continuation November 2, 2016

**R930. Transportation, Preconstruction.****R930-5. Establishment and Regulation of At-Grade Railroad Crossings.****R930-5-1. Purpose and Authority.**

(1) The Utah Department of Transportation (the "Department") oversees all Public Highway-Rail Grade Crossings ("Crossings") in the state of Utah. Railroads have jurisdiction over and are responsible for the safety of private crossings. The Department's goals are to improve the safety for all users of a Crossing and provide for the efficient operation of trains and vehicles and pedestrians access through those Crossings. As part of this effort, the Department promotes the elimination of Crossings and at regular intervals, the Department:

- (a) Reviews all existing Crossings in the state for safety deficiencies;
- (b) Evaluates and approves the location of a new Crossing;
- (c) Prescribes the type of improvements at a Crossing;
- (d) Defines maintenance responsibility for a Crossing; and
- (e) Determines funding apportionments for all Section 130 Crossing Projects.

(2) This rule describes procedures for evaluating and selecting a Crossing for improvement as well as for evaluating and selecting the type of improvements at a Crossing. Such improvements include, but are not limited to:

- (a) The evaluation and selection of the type of Passive and Active Warning Devices;
  - (b) The process for evaluating and determining whether a Crossing should be grade separated; and
  - (c) The process for evaluating Quiet Zones as outlined in 49 CFR 222.
- (3) This Rule outlines the responsibilities of the various parties with respect to the design, maintenance and funding for Crossing improvements.

(4) This Rule is authorized by Section 54-4-15 "Establishment and Regulation of Grade Crossings," Section 54-4-14, Section 72-1-201, Section 41-6a-1205 and Title 63G, Chapter 3 "Utah Administrative Rulemaking Act."

**R930-5-2. Incorporation by Reference.**

The following federal law, state law, federal agency manuals, association standards and UDOT technical requirements are incorporated by reference:

- (1) 23 CFR 148 "Highway Safety Improvement Program" (2005);
- (2) 23 CFR 646 "Railroads" (2009);
- (3) 23 CFR 655 "Traffic Operations" (2009) "Manual of Uniform Traffic Control Devices (MUTCD)" (2003, with revisions 1 and 2 incorporated, dated 2007);
- (4) 23 CFR 924 "Highway Safety Improvement Program" (2009);
- (5) 49 CFR 209 "Accidents and Incidents" (2009);
- (6) 49 CFR 212 "State Safety Participation Regulations" (2009);
- (7) 49 CFR 222 "Use of Locomotive Horns at Public Highway-Rail Grade Crossing" (2009)
- (8) 49 CFR 659 "Rail Fixed Guideway Systems; State Safety Oversight" (2009);
- (9) "A Policy on Geometric Design of Highway and Streets", American Association of State Highway and Transportation Officials (AASHTO) (2004);
- (10) "Railroad-Highway Grade Crossing Handbook", Federal Highway Administration (FHWA) (August 2007);
- (11) "Preemption of traffic signals near Railroad Crossings", Institute of Traffic Engineers (ITE) (2004);
- (12) "Manual for Railway Engineering", Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007; and
- (13) "Standard Drawing ST-7 Pavement Marking and

Signs at Railroad Crossings", Utah Department of Transportation (UDOT) (2008).

**R930-5-3. Definitions.**

(1) "Active Warning Device" means traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and Crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

(2) "Company" means any local district or utility company.

(3) "Diagnostic Team" means an appointed group of knowledgeable representatives of the parties of interest in a Crossing or group of Crossings.

(4) "FHWA" means the Federal Highway Administration, an agency within the United States Department of Transportation.

(5) "FRA" means the Federal Railroad Administration, an agency within the United States Department of Transportation.

(6) "FTA" means the Federal Transit Administration, an agency within the United States Department of Transportation.

(7) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the area within the right-of-way.

(8) "Highway-Rail Grade Crossing" ("Crossing") means the general area where a Highway and a Railroad cross at the same level within which are included the Railroad, Highway, and roadside facilities for public traffic traversing the area.

(9) "Highway Authority" means the Department or local governmental entity that owns or has jurisdiction over a Highway.

(10) "MUTCD" means the Manual of Uniform Traffic Control Devices as adopted in Section 41-6a-301.

(11) "Neutral Quadrant" means the quadrant that minimizes sight distance conflicts with immediate on-coming auto traffic. Generally, the neutral quadrant is on the far side of the tracks from the direction of vehicular travel.

(12) "Passive Warning Device" means those types of traffic control devices, including signs, markings and other devices located at or in advance of a Crossing to indicate the presence of a Crossing but which do not change aspect upon the approach or presence of a train.

(13) "Preliminary Engineering" means the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction, including locating, surveying, designing, and related work.

(14) "PSC" means the Public Service Commission of the State of Utah.

(15) "Quiet Zone" means a section of a rail line at least one half mile in length that contains one or more consecutive public Crossings at which locomotive horns are not routinely sounded, see 49 CFR 222.

(16) "Railroad" means all rail carriers, whether publicly or privately owned, and common carriers, including line haul freight and passenger railroads, public transit districts, switching and terminal railroads, passenger carrying railroads such as rapid transit, and commuter and street railroads.

(17) "Section 130 Crossing Project" means a project that eliminates hazards and improves the safe operation of trains, vehicles, and pedestrians through a crossing and is authorized and funded by United State Code, Title 23, Section 130 Program funds.

**R930-5-4. Type and Selection of Crossing Projects.**

(1) Section 130 Crossing Projects:

- (a) Section 130 Crossing Project types include, but are not

limited to:

- (i) Elimination of a Crossing by combining multiple Crossings;
- (ii) Elimination of a Crossing by the relocation of a Highway;
- (iii) Elimination of a Crossing by the construction of a new grade separation;
- (iv) New safety improvements;
- (v) Reconstruction of a Crossing grade separation structure; and
- (vi) Repair of Crossing material, that would otherwise be the responsibility of the Railroad as prescribed in Subsection R930-5-8-(1)(b), if the repair of the Crossing material affects or is an integral part of the Crossing safety devices.

(b) The Department has established a process for the evaluation and selection of Section 130 projects that considers the potential reduction in the number and/or severity of collisions, the cost of the Crossing projects, and available resources. Specific methods for selecting and prioritizing Crossings for improvement include:

(i) The collection and maintenance of data utilizing the USDOT Grade Crossing Inventory to record Crossing data including, but not limited to the current physical condition, average daily traffic, and collision data associated with a Crossing.

(ii) An engineering study conducted on a Crossing at the request of a Highway Authority, Railroad, or company or using a priority list developed using the USDOT Accident Prediction Model. The purpose of the engineering study is to review the Crossing and its environment, identify the nature of any deficiencies and recommend alternative improvements. Specifically, an engineering study reviews Crossing characteristics, the existing traffic control system, and the Highway and Railroad characteristics. Based on the review of these conditions, an assessment of existing and potential hazards is made, deficiencies are identified and countermeasures are recommended.

(iii) System or corridor evaluations consider a Crossing as a component of a larger transportation system. The objective is to improve both safety and operations of the total system or segments of the system. In such cases, all Crossings within a corridor are evaluated and can be programmed for improvements. The optimal outcome of a corridor study involves a combination of engineering improvements and closures such that both safety and operations are highly improved.

(2) Non-Section 130 Crossing Projects:

(a) Non-Section 130 Crossing Project types include, but are not limited to:

(i) Crossing projects that use Railroad properties or involve adjustments to Railroad facilities required by Highway construction, but do not involve the elimination of hazards at a Crossing; and

(ii) Construction of a new Crossing at or over a Railroad track where the new Highway is not a relocation of an existing Highway.

(b) Non-Section 130 Crossing Projects will be evaluated and selected as part of the Department's normal STIP evaluation and approval process.

#### **R930-5-5. Diagnostic Team.**

(1) The role of the Diagnostic Team is to make recommendations to the Department for needed safety improvements at a Crossing.

(2) The Diagnostic Team reviews and evaluates proposed improvements for all Section 130 Crossing Projects and Non-Section 130 Crossing Projects. The Diagnostic Team reviews a Crossing when requested by a Highway Authority, Railroad, or Company when changes in Highway traffic patterns are

proposed, when proposed Railroad traffic is determined to increase significantly, when complaints are made about a Crossing, when safety concerns arise, or when the Department receives a closure request. The Department will consider all recommendations made by the Diagnostic Team and, if appropriate, input received from the public at large (in accordance with Section R930-5-13) before issuing orders for the improvement of Crossings.

(3) The Department may also make formal findings and rulings as part of its process for evaluating Crossing improvements or during routine inspection of Crossings, independent of the Diagnostic Team.

(4) The Diagnostic Team is usually composed of the following team members:

- (a) Chief Railroad Engineer for the Department;
- (b) Representative from the Railroad;
- (c) Representative from the appropriate Company, if applicable; and

(d) Representative from the Highway Authority (preferably from engineering or public works), and when available, and where appropriate public school district, law enforcement agency and invites with an interest in the Crossing.

(5) The role of the Diagnostic Team is to:

- (a) Recommend the elimination of a Crossing;
- (b) Recommend the type of safety improvements including, but not limited to Passive Warning Devices, Active Warning Devices, the type of Crossing material, improvements to Highway approaches, removal of foliage and brush, pedestrian facilities (including compliance with ADA requirements), and improvements to street lighting;
- (c) Review all requests for a new Crossing;
- (d) Review all requests to reclassify a Crossing from private to public;

(e) Recommend the Department conduct an engineering study to evaluate the need for a new overpass or other grade separation structure(s); and

(f) Recommend any other safety related changes to improve vehicle and pedestrian safety.

(6) Duties of Diagnostic Team members generally include participating in Crossings reviews and providing input into the Diagnostic Team recommendations. Specific duties include, but are not limited to the following:

- (a) The Chief Railroad Engineer will, when applicable:
  - (i) Select a Section 130 Crossing Project from a corridor study, or based on a Highway Authority, Railroad, or Company request;
  - (ii) Schedule and notify Diagnostic Team members, and the FHWA, of the date and time of an upcoming review;
  - (iii) Conduct Crossing review and issue related reports in a reasonable time after the review and send copies to all those attending the review;
  - (iv) Review and approve Crossing improvements recommended by the Diagnostic Team;
  - (v) Determine Section 130 apportionments for Crossing projects;
  - (vi) Initiate all Notices of Intended Action for Crossing projects, as appropriate;
  - (vii) Review and approve the contractual requirements for Crossing projects using Section 130 Program funding;
  - (viii) Review all necessary field data obtained for the Crossing, including but not limited to site plan maps and photographs of the existing Crossing conditions.

(b) The Railroad representative shall provide all relevant data related to the Crossing, including, but not limited to train volumes, accident data and any other pertinent data regarding the Crossing;

(c) The Highway Authority representative shall:

- (i) Provide relevant data regarding the Crossing including, but not limited to Highway traffic volumes, planned road

construction activities, and an approved master street plan for the Highway;

(ii) Invite local school district if appropriate and request that the local school district representative provide child access and bus routing plan information; and

(iii) Invite local law enforcement agency if appropriate and request that the law enforcement agency provide relevant data, including, but not limited to any safety concerns about the Crossing.

#### **R930-5-6. Design of a Highway-Rail Grade Crossing.**

(1) The Department shall approve or disapprove, as appropriate, the design of all Crossing improvements, including the addition of a new Crossing and treatments for a closed Crossing. All design plans shall include, if available:

- (i) USDOT identification numbers;
- (ii) Street addresses;
- (iii) Highway milepost;
- (iv) Railroad subdivision; and
- (v) Railroad milepost for the Crossing.

(2) Design of Crossing related facilities that are the responsibility of the Railroad shall conform to the specifications and design standards of the Railroad.

(3) Design of Crossing related Highway approaches, those areas two feet outside of rail that are the responsibility of the Highway Authority shall conform to the specifications and design standards of the Highway Authority, subject to approval by the Department. Where a Highway Authority does not have an approved standard, Department standard drawings for the design of the Crossing approaches apply.

(4) Traffic control devices installed as part of any Crossing improvements shall comply with the MUTCD. Required clearances for all devices shall conform to the MUTCD and any variances from MUTCD requirements must be approved by the Department.

(5) When it is determined that the railroad crossing material needs to be extended or replaced, the agency doing the design of the crossing shall determine the minimum length of the crossing material. The length shall be determined based on the proposed width of the new roadway or from the approved master plan roadway width. The crossing material length shall extend at least two feet from the outer edge of the roadway, beyond the roadway clear zone area, or to the back of the concrete curb and gutter or out past the sidewalks.

(6) The Railroad is responsible for the design of Railroad Active Warning Devices, including the location, activation circuitry, hardware, and software in accordance with MUTCD.

(a) When Active Warning Devices are within 200 feet of a traffic signal, the Highway Authority and the Railroad shall coordinate the design of the interconnect between the traffic signal and Automatic Warning Device to ensure sufficient preemption time to clear potential vehicle stacking across a Crossing.

(b) Signal houses for Active Warning Devices shall be located in the Neutral Quadrant unless approved by the Department.

(7) The Railroad is responsible for the design of all required Railroad Passive Warning Devices located within the Railroad road right-of-way in accordance with the MUTCD, specific Passive Warning Devices include:

- (a) Sign R15-1 (Crossbuck);
- (b) Sign R15-2 (Number of tracks);
- (c) Sign R1-1 (STOP);
- (d) Sign R1-2 (Yield);
- (e) Sign R15-3 (Exempt);
- (f) Sign R8-9 (Tracks out of Service).

(8) Design and installation of all other Passive Warning Devices, signs, and pavement markings is the responsibility of the Highway Authority. Design and location of the devices shall

be in accordance with the MUTCD.

(9) For clearances, refer to the Manual for Railway Engineering, Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007.

#### **R930-5-7. Highway Authority and Railroad Responsibility to Request Approval and Arrange for the Installation of Crossing Improvements.**

(1) When a Highway Authority widens or constructs a new Highway, the Highway Authority shall be responsible to request a Diagnostic Team review of the Crossing and arrange by agreement with the Railroad to design and install all required improvements concurrent with its request for approval from the Department:

(2) Prior to approving new residential, commercial, or industrial development within 1000 feet of a Crossing, the Highway Authority shall request a Diagnostic Team review to assess the potential traffic impacts at the Crossing.

(3) Before a Highway Authority approves increased development that changes the conditions of a Crossing by significantly increasing traffic volumes, the Highway Authority plans shall be approved by the Department.

(a) No new access openings can be opened within 250' of a Crossing unless approved by the Department.

(b) The Highway Authority shall arrange by agreement with the Railroad for any required Railroad facility changes ordered by the Department.

(4) The Highway Authority is responsible for the installation of all Passive Warning Devices outside the Railroad right-of-way, excepting those signs listed in Section R930-5-6.6, or unless a separate agreement applies.

(5) Before a Railroad modifies any safety related devices or the physical layout of a Crossing, the Railroad shall request a Diagnostic Team review of the proposed changes and request Department approval of all Crossing related designs.

(6) A Highway Authority, Railroad, or Company making a request for a new Crossing or the reclassification of a Crossing from private to public shall provide the Department with an approved master street plan from the appropriate jurisdiction showing the elimination or combination of existing Crossings and/or other safety improvements that enhance the overall safety of the corridor before a new Crossing or reclassification of a Crossing from private to public will be approved.

(a) A Highway Authority, Railroad, or Company requesting a new Crossing or reclassification of a Crossing from private to public will mutually arrange by agreement for the proposed new Crossing or reclassification of a Crossing before seeking Department approval of the change.

#### **R930-5-8. Maintenance.**

(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a separate agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department and/or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

#### **R930-5-9. Funding Authorization and Apportionment of Cost for Section 130 Crossing Projects.**

(1) Funding Authorization.

(a) Section 130 Crossing Projects:

(i) Costs associated with a FHWA authorized and approved program are eligible for federal participation. Eligible costs incurred in an approved program prior to authorization by FHWA are not reimbursable, but may be included as part of the Railroad share of the project cost where such a share is required. Eligible costs include, but are not limited to cost associated with environmental clearance, Preliminary Engineering, and right-of-way acquisition.

(ii) Prior to FHWA issuing its authorization to advertise the construction of a Crossing project, the Crossing project must receive environmental clearance; the plans, specifications and estimates must be approved by FHWA; and any proposed agreement between the Railroad and the Department must be reviewed and approved by FHWA, as per FHWA's stewardship agreement with the Department.

(b) Non-Section 130 Crossing Projects:

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

(2) Apportionment of Costs.

(a) Section 130 Crossing Projects:

(i) Apportionment of costs for installation, maintenance, and reconstruction of safety related improvements at a Crossing shall be in accordance with 23 CFR 646 and Section 54-4-15.

(ii) When a Highway Authority widens a Highway, the Highway Authority shall fund all improvements including, but not limited to Passive Warning Devices, Active Warning Devices, Crossing material, and other improvements as ordered by the Department in consultation with the Diagnostic Team.

(iii) The Department will evaluate each Crossing project to determine the extent to which, if any, the Crossing projects benefits the respective parties. If a Crossing project is determined not to benefit a party, the party will not be required to participate in the funding.

(b) Non-Section 130 Crossing Projects.

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

#### **R930-5-10. Railroad and Highway Authority Agreements.**

(1) Where construction of a Section 130 Crossing Project requires use of Railroad properties or adjustments to Railroad facilities, the Department will prepare an agreement with the Railroad.

(2) Master agreements between the Department and a Railroad on an area wide or statewide basis may be used. These agreements shall contain the specifications, regulations, and provisions required in conjunction with work performed on all Crossing projects.

(3) On a project-by-project basis, the written agreement between the Department and the Railroad shall include the following minimum requirements:

(a) Reference to appropriate federal regulations;

(b) Detailed statement of the work to be performed by each party;

(c) The extent to which the Railroad is required to adjust its facilities;

(d) The Railroad's share of the project cost;

(e) An itemized estimate of the cost of the work to be performed by the Railroad;

(f) Method to be used for performing the work, either by Railroad forces or by contract;

(g) Maintenance responsibility;

(h) Form, duration, and amounts of any needed insurance; and

(i) Appropriate reference to or identification of plans and specifications.

(4) On matching fund agreements between the Department and a Highway Authority, the written agreement shall include the following minimum requirements:

(a) Description of work and location, city, county, and state;

(b) Reference to federal regulations that matching funds will be provided by the Highway Authority;

(c) Detailed statement of work to be performed by each party regarding design, agreements, inspection, and maintenance;

(d) Statement of finances of project and matching funds to be provided by Highway Authority, deposits, invoices, and cost overruns or under runs.

(5) Agreements for industry track Crossings are prepared between the Highway Authority and the industry.

(6) In order that a Crossing project shall not become unduly delayed, the Department shall consider a six-month period from issuance of the Railroad agreement to be adequate for completion of work by the Railroad involved. Should more than the specified period elapse, the Department shall require the Railroad to proceed with the work covered by the agreement

under the authority contained in Section 54-4-15 and approval from the FHWA will be solicited in conformance with 23 CFR 646.

**R930-5-11. Crash Reporting.**

A Railroad is required to report crashes resulting in injury or death to an individual or damage to equipment, roadbed, or autos occurring at a Crossing to the Department's Chief Railroad Engineer within 2 hours of the incident. Initial notification must include the USDOT Crossing number, street address, municipality, time of incident, train identifier, and contact phone number for further information. Written crash reports shall be submitted to the Department within 30 days of the incident. Current Federal Railroad Administration (FRA) form F 6180.57 shall be used to report a crash.

**R930-5-12. Exemption of Railroad Crossings.**

Under Section 41-6a-1205, certain vehicles are required to stop at all Crossings unless a Crossing is signed as exempt. Recommendation to exempt a Crossing is made by a Diagnostic Team and the Department is responsible for issuing the exemption order. The following Crossings are not eligible for exemption under this Section:

- (1) Mainline Crossings with Passive Warning Devices only;
- (2) Crossings within approved Quiet Zones; and
- (3) Crossings where insufficient sight distance exists.

**R930-5-13. Notice of Intended Action.**

(1) Public notification of a public hearing opportunity is required, in conformance with Section R930-2, when the Department is considering a proposal to permanently close a Crossing, add a track at a Crossing, or construct a new Crossing. It is the responsibility of the Highway Authority, Railroad, or Company requesting the proposed action, in consultation with the Department, to carry out the requirements of this section unless otherwise agreed to by the Department.

(2) In instances where the action proposed by the Department does not substantially affect the public, the Department may waive the requirement to notice a public hearing opportunity, provided the affected Diagnostic Team members concur in writing.

**KEY: railroad, crossing, transportation, safety**

**April 21, 2011**

**Notice of Continuation November 2, 2016**

**41-6a-1205**

**54-4-14**

**54-4-15**

**72-1-201**

**R930. Transportation, Preconstruction.****R930-6. Access Management.****R930-6-1. Purpose.**

- (1) The purpose of this rule is to:
- maximize public safety;
  - provide for efficient highway operations and maintenance of roadways; and
  - utilize the full potential of the highway investment.
- (2) This rule serves to establish highway access management procedures and standards to protect Utah's state highway system. The state highway system constitutes a valuable resource and a major public investment. The Utah Department of Transportation (Department) has an obligation and a public-trust responsibility to preserve and maintain the state highway system, protect the public investment in this system, and to ensure the continued use of state highways in meeting state, regional, and local transportation needs and interests. This rule also serves to establish a procedure for allowing and establishing new or existing highways as limited-access facilities, for the elimination of intersections and for the right to access restricted facilities.
- (3) The primary function of a state highway is to provide system continuity and efficiency of state highway system operation and maintenance activities. Utah Code Section 72-4-102.5. A state highway may provide access to property as a secondary function. The primary function of city and county roads is to provide access to property. Owners of property adjoining a state highway have certain rights of access unless such access has been restricted by purchase or by legal action. The Department recognizes that property owners have the right of reasonable access to their property. This rule establishes standards that balance the need for reasonable access to properties with the need to preserve the smooth flow of traffic on the state highway system in terms of safety, capacity, and speed.
- (4) Failure to manage access to and from state highways can cause an increase in accidents, increased traffic congestion, decline in operating speed, loss of traffic carrying capacity, and increased traffic delays. This failure results in reduced traffic mobility, increased congestion, transportation costs and delays, and contributes to higher rates of property damage, personal injury, and fatal accidents. The proliferation of driveways, intersections, and traffic signals without regard to their proper design, location, and spacing degrades highway operation and performance and poses traffic hazards for the traveling public.
- (5) It is a goal of the Department to improve public safety in the development, design, and operation of the state highway system. In exercising this public safety duty, the Department enacts this rule to limit the number of conflict points at driveway locations, separate highway conflict areas, reduce the interference of through-traffic, and adequately space at-grade signalized and unsignalized intersections. The Department works closely with property owners and local authorities to provide reasonable access to the state highway system that is safe, and enhances the movement of traffic. The Department shall utilize all of the state highway right-of-way to the best advantage for highway purposes through a permit process that assesses and grants the number, location, width, and design of connecting streets and driveways.
- (6) This rule provides guidance to Department Permit Officers, local authorities, land owners, or developers for when a grant of access or encroachment permit is required, how to apply for a permit, what standards or guidelines are considered in the granting of an access and encroachment permits, and what to do when a variance is sought to deviate from the standards and requirements of this rule.

**R930-6-2. Authority.**

- (1) This rule is authorized by the following sections of the

Utah Code.

- Section 41-6a-216. Removal of plants or other obstructions impairing view - Notice to owner - Penalty.
- Section 41-6a-1701. Backing - When permissible.
- Subsection 72-1-102(11). "Limited-access facility" defined.
- Section 72-1-201. Creation of Department of Transportation - Functions, powers, duties, rights, and responsibilities.
- Section 72-3-109. Division of responsibility with respect to state highways in cities and towns.
- Section 72-4-102.5. Definitions - Rulemaking - Criteria for state highways.
- Section 72-6-117. Limited-access facilities and service roads - Access - Right-of-way acquisition - Grade separation - Written permission required.
- Section 72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law - Permit and fee requirements - Rulemaking - Penalty for violation.
- Section 72-7-103. Limitation on access authority.
- Section 72-7-104. Installations constructed in violation of rules - Rights of highway authorities to remove or require removal.
- Section 72-7-105. Obstructing traffic on sidewalks or highways prohibited.
- Section 72-7-503. Advertising - Permit required - Penalty for violation.

**R930-6-3. Scope.**

- (1) This rule supersedes the following publications:
- "Regulations for the Accommodation of Utilities on Federal Aid and Non Federal Aid Highway Rights-of-way" - 1970.
  - "Regulations for the Control and Protection of State Highway Rights-of-way" - 1982, and previous editions of this rule, "Accommodation of Utilities and the Control and Protection of State Highway Rights of Way" - 2006.
- (2) Utility accommodation in state highway right-of-way is governed by Rule 930-7.
- (3) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

**R930-6-4. Application.**

- (1) This rule applies to all state highways within the Department's jurisdiction.
- (2) The Department may issue grants of access and encroachment permits only when the application is found by the Department to be in compliance with this rule. The Department is authorized to impose terms, conditions and limitations as necessary and convenient to meet the requirements of this rule. In no event shall a grant of access or encroachment permit be issued or authorized if it is detrimental to the public health, welfare, and safety.
- (3) This rule requires that installation or modification of access facilities to the state highway system be made by permit from the Department. This rule provides a description of information to be contained in the grant of access and encroachment permit application, the standards against which the application shall be measured, and the administrative relief offered by the Department to review the balance of private property rights of reasonable access versus the public need to preserve the smooth flow of traffic on the state highway system. The standards, procedures, and requirements of this rule are in addition to other county or municipal land use regulation authority and apply to grant of access approvals on the state highway system. Local authorities may adopt similar policies or procedures for application of access management on other

street systems.

(4) If any part or parts of this rule are held to be unlawful, such unlawfulness may not affect the validity of the remaining parts of this rule. Nothing in this rule shall be construed to disqualify the Department from receiving federal participation on any federal-aid highway project.

#### **R930-6-5. Definitions.**

(1) "AADT" means the Annual Average Daily Traffic, the average 24-hour traffic volume at a given location over a full 365-day year, divided by 365.

(2) "AASHTO" means the American Association of State Highway and Transportation Officials.

(3) "ADT" means the Average Daily Traffic, the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period. The Department may, at its own discretion, define the appropriate time period (including days of the week) to be considered when measuring or calculating ADT.

(4) "Acceleration lane" means a speed-change lane, including tapered areas, for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can more safely merge with through traffic.

(5) "Access" or "access connection" means any driveway or other point of entry or exit such as a street, road, or highway that connects to the general street system. Where two public roadways intersect, the secondary roadway is considered the access.

(6) "Access approval" see "grant of access."

(7) "Access category" is a classification assigned to a segment of highway that determines the degree to which access to a state highway is managed. It is also referred to as "category."

(8) "Access control" see "controlled access highway."

(9) "Access corridor control plan" specifies the limitation or management of driveways, streets or other access points which balance the need for reasonable access to land development with the smooth and efficient flow of traffic defined by safety, capacity, and travel speed. Also referred to as a "corridor agreement."

(10) "Access management plan" means a roadway design plan that designates access locations and their design for the purpose of bringing those portions of roadway included in the access management plan into conformance with their access category to the extent feasible.

(11) "Access opening" means a vehicular access point through or across a limited-access or no-access line.

(12) "Access operation" refers to the utilization of an access for its intended purpose and includes all consequences or characteristics of that process including access volumes, types of access traffic, access safety, time of the access activity, and the effect of such access on the state highway system.

(13) "Access spacing" means the distance measured from the inside point of curvature of the radius of an intersection or driveway to the inside point of curvature of the adjacent intersection or driveway radius. In the case of a flared curb driveway, the distance is measured from or to the inside driveway edge.

(14) "Access width" means the width of the traveled portion of the access as it extends away from the main highway. Access width measures only the travel portion of the access; it excludes auxiliary or turn lanes, transitions, radii, flares, and curb and gutter.

(15) "Agricultural access" means an access to undeveloped or agricultural property.

(16) "Applicant" means any person, corporation, entity, designee or agency applying for a permit. As used within this rule, applicant also refers to the property or project subject to a grant of access or encroachment permit application.

(17) "Application fees" means the latest application fees established by the Department and approved by the legislature. Application fees are non-refundable and are designed to offset access management application review costs.

(18) "Arterial highway" is a general term denoting a highway primarily for through traffic, usually on a continuous route.

(19) "Auxiliary lane" refers to the portion of the roadway adjoining the traveled way for speed change, turning, storage for turning, weaving, truck climbing, and other purposes supplementary to through traffic movement.

(20) "Bandwidth" means the time in seconds or the percent of traffic signal cycle between a pair of parallel speed lines on a time-space diagram that delineate a progressive movement. It is a quantitative measurement of the through traffic capacity of a signal progression system. The greater the bandwidth the higher the roadway capacity.

(21) "Capacity" means the maximum rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a lane or a roadway during a given time period under prevailing roadway and traffic conditions. Capacity may refer to the entire roadway, a single lane, or an intersection. Measures of capacity may include, but are not limited to, traffic volumes, speed, throughput and density.

(22) "Channelizing island" means a defined area between traffic lanes for control of vehicle movements.

(23) "Clear roadside policy" refers to the policy employed by the Department to increase safety, improve traffic operations and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground, within the clear zone as defined in the AASHTO Roadside Design Guide and the Department's current standards and specifications, including Standard Drawing DD-17.

(24) "Clear zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry as referenced in the AASHTO Roadside Design Guide.

(25) "Control of access" means the condition where the right of owners of abutting land or any other persons having access to highway right-of-way is controlled by the appropriate public authority.

(26) "Controlled access highway" means a street or highway to which owners or occupants of abutting lands and other people have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway. See also "limited-access line" and "no-access line."

(27) "Contiguous property" means a parcel of land that has two or more adjoining properties abutting highway rights-of-way.

(28) "Corridor agreement" refers to a multi-agency cooperative agreement for managing the development, operations, and maintenance of a highway corridor or segment of highway corridor. In this rule, corridor agreements refer to agreements between the Department and one or multiple Local Authorities and are based on signal control plans and access corridor control plans agreed on and approved by the Department and local authorities.

(29) "County roads" are all roads that are or may be established as a part of a county system of roads.

(30) "Deceleration lane" is a speed-change lane, including tapered areas, enabling a vehicle to leave the mainstream of faster moving traffic and to slow to a safe turning speed prior to exiting the highway.

(31) "Department" means the Utah Department of

Transportation. Where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, Department means an authorized representative of the Utah Department of Transportation.

(32) "Department Region permitting office" refers to the permitting office of the Utah Department of Transportation regional offices.

(33) "DVH" means the design hour volume, an hourly traffic volume determined for use in the geometric design of highways. It is by definition the 30th highest hour vehicular volume experienced in a one-year period. The Department shall determine the appropriate DVH conditions. In most cases the Department will require the use of the peak hour volume as the DVH, typically in a range of 8-12 percent of AADT if actual volume data not available. For rural areas and recreational routes the Department will typically require the use of the 30th highest hour for DVH.

(34) "Design speed" means the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern as referenced in the most recent addition of the AASHTO "A Policy on Geometric Design of Highways and Streets."

(35) "Divided highway" means a highway with separated traveled ways for traffic in opposite directions, such separation being indicated by depressed dividing strips, raised curbing, traffic islands, or other physical barriers so constructed as to discourage crossover vehicular traffic.

(36) "Driveway" refers to an access constructed within the public highway right-of-way, connecting the public highway with the adjacent property. Driveway to highway connection designs may include, but are not limited to, curb cuts and radius curb returns.

(37) "Driveway angle" means the angle of the driveway alignment relative to the highway alignment. The driveway angle refers to the alignment of a driveway near and at the connection with the highway. The driveway angle is measured between the alignment of the driveway and the alignment of the highway traveled way.

(38) "Driveway spacing" means the distance between adjacent driveways on the side of the roadway as measured from near edge to near edge, considered necessary for the safe ingress and egress of vehicles and the safe operation of the highway at its posted speed.

(39) "Easement" is an interest in real property that conveys use, but not ownership, of a portion of an owner's property.

(40) "Encroachment" is the use of highway right-of-way.

(41) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right-of-way.

(42) "Expressway" is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

(43) "Federal-aid highway" is a highway eligible to receive Federal aid.

(44) "FHWA" means the Federal Highway Administration.

(45) "Freeway" is an expressway with full control of access.

(46) "Freeway one-way frontage road" is a one-way public street that runs parallel to a freeway and provides direct freeway access through ramps that connect the freeway main lane and frontage road.

(47) "Frontage road" is a public street or road auxiliary to and normally alongside and parallel to the main highway, constructed for the purposes of maintaining local road continuity and the controlling of direct access to the main highway.

(48) "Full access" means that ingress and egress is afforded at the point of access. It does not mean full movement.

(49) "Full movement" means that all possible vehicle turning movements are afforded at the point of access.

(50) "Functional classification" refers to a classification system that defines a public roadway according to its purposes and hierarchy in the local or statewide highway system.

(51) "General street system" is the interconnecting network of city streets, county roads, township roads, and state highways in an area.

(52) "Grade separation" is a crossing of two roadways, a roadway and a fixed guideway, a roadway and a pedestrian walkway, or bike path in such a way that neither facility interferes with the operation of the other.

(53) "Gradient or grade" means the rate or percent change in slope, either ascending or descending from or along the highway measured along the centerline of the roadway or access.

(54) "Grant of access" is the document that specifies requirements and conditions under which a driveway, curb cut, or other vehicular access point is granted. Also referred to as grant of access approval or access approval. Unless specified, references to grant of access refer to grants of access and temporary grants of access.

(55) "Hierarchy of the roadway" refers to the functionality and the mobility flow of traffic across a system of highway facilities. The natural progression to flow from a highest order facility of high capacity and high operational speed serving major economic centers to the lowest order facility of low volume, low speed and serving multiple driveway connections.

(56) "Highway" is a general term for denoting a public way for the transportation of people, materials, and goods, including the entire area within the right-of-way. Also referred to as road.

(57) "Interchange" is a facility that provides ramps for access movements between intersecting roadways that are separated in grade. The ramps and any structures used to accomplish the movement of traffic between the roadways are considered part of the interchange.

(58) "Interchange crossroad access spacing" means the distance measured between the interchange ramp gore area (point of widening on the crossroad) and the adjacent driveway or street intersection.

(59) "Intersection" is the general area where two or more highways or streets join or cross at-grade.

(60) "Intersection sight distance" is the distance at which a motorist attempting to enter or cross a highway is able to observe traffic in order to make a desired movement. The required distance varies with the speed of the traffic on the main highway.

(61) "Interstate highway system" refers to the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments. It is also referred to as interstate.

(62) "Inventory" means the listing maintained by the Department that gives the access category for each section of state highway.

(63) "ITE" means the Institute of Transportation Engineers.

(64) "Lane" is the portion of a roadway for the movement of a single line of vehicles. It does not include the gutter or shoulder of the roadway.

(65) "LOS" means level of service, a qualitative measure describing a range of traffic operating conditions such as travel speed and time, freedom to maneuver, traffic interruptions, and comfort and convenience as experienced and perceived by motorists and passengers. Six levels of service are defined from A to F, with A representing the free flow travel conditions and F representing extreme traffic congestion. LOS shall be evaluated according to the procedures and conditions defined in

the most recent edition of AASHTO "A Policy on Geometric Design of Highways and Streets."

(66) "Limited-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to limit and control access across such lines and thereby preserve the functionality, operation, safety, and capacity of the highway system. The highest priority and consideration for access category spacing standards and design apply where 1 a lines exist. Also referred to as line of limited-access, limited-access highway, limited-access freeway or limited-access facilities (See Utah Code Section 72-1-102(11)).

(67) "Local authority" means the governing body of counties and municipalities.

(68) "Local road" includes any road or highway in public ownership that is not designated part of the Utah state highway system or as defined by Utah Code. It is also referred to as a "local street."

(69) "Median" means the portion of a roadway separating the traveled ways for opposing traffic flows.

(70) "Median island" means a curbed island that prevents egress traffic from encroaching upon the side of the drive used by ingress traffic. The island ensures that ingress traffic has the necessary maneuvering space.

(71) "MPH" means miles per hour, a rate of speed measured in miles per hour.

(72) "MUTCD" means the current Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(73) "No-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to disallow connections across such lines. No-access lines are of the highest priority and order of the state highway system and have been established to preserve and protect the functional operation of the adjacent facility. No-Access Lines are created through the purchase of access rights. The purchase of these access rights may utilize federal, state, or combination of federal and state funds. Also referred to as line of no-access or no-access facilities.

(74) "Peak hour" means the hour of the day in which the maximum volume occurs.

(75) "Peak hour volume" see "design hour volume."

(76) "Permit" as referenced under this rule may include grant of access or encroachment permit. Permits defined under this rule do not include other written permission that may be required by local authorities for utility work in the state highway right-of-way, and other permits referenced in other applicable rules.

(77) "Permit issuance date" means the date when the authorized Department official signs the permit electronically or by any other means.

(78) "Permittee" means any person, unit of government, public agency, or any other entity to whom a grant of access or encroachment permit is issued. The permittee is responsible for fulfilling all the terms, conditions and limitations of the grant of access or encroachment permit.

(79) "Person" means any individual, partnership, corporation, association, government entity, or public or private organization of any character other than a state agency, as noted in Section 63G-3-102(12).

(80) "Posted speed" means the maximum speed limit for a specified section of highway.

(81) "Public authority" means a public administrative agency or corporation authorized to administer a public facility.

(82) "Reasonable alternate access" refers to conditions where access to the general street system from a property adjoining a state highway can be achieved by way of another alternative including but not limited to a lesser function road, internal street system, or dedicated rights-of-way or easements. For example, where a subject property adjoining a state highway also adjoins or has access to an internal street system, such

access shall be considered a reasonable alternate access and any access to the state highway shall be considered an additional access. Determination of reasonable alternate access shall be determined in consultation with the appropriate local authority and as prescribed in this rule.

(83) "Relocate" means to remove and establish in a new place and may include, if necessary to conform a property's access to the provisions of this rule, merging or combining non-conforming access with other existing access so as to eliminate the non-conformance. In such event, the property owner or permittee, if applicable, may be required to remove all physical elements of the non-conforming access such as curb cuts and surfacing material and install curbing, barriers, or other physical separators to prevent continued use of the access.

(84) "Right-in right-out" refers to a type of three-way road intersection where turning movements of vehicles are restricted with only right turns allowed. Also refers to intersection or driveway movements restricted to right-turn ingress and right-turn egress movements only.

(85) "Right-of-way" is a general term denoting property or property interest, usually in a strip devoted to transportation purposes.

(86) "Road" see "highway."

(87) "Roadside" means the area between the outside shoulder edge and the right-of-way limits.

(88) "Roadway" means the portion of a highway, including shoulders, for vehicular use.

(89) "Rural" includes areas incorporated, or designated by census, with a population of less than 5,000.

(90) "Shared access" is an access point serving more than one parcel or landowner.

(91) "Shoulder" means the paved or unpaved portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles.

(92) "Signal" means a traffic control signal. It is also used to refer to a signalized intersection or traffic signal.

(93) "Signal control plan" is a comprehensive action plan for identification of signal locations along a corridor or segment of a corridor. The purpose of a signal control plan is to provide for efficiency of signal progression and corridor functionality. This is also referred to as a corridor agreement.

(94) "Signalization" means the installation or modification of a traffic control signal.

(95) "Signal progression" means the progressive movement of traffic at a planned rate of speed without stopping through adjacent signalized locations along a corridor or within a traffic control system.

(96) "Signal spacing" means the distance between signalized intersections measured from the centerline of a signalized intersection cross street to the centerline of the adjacent existing or future signalized intersection cross street. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and is thought to be one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Traffic signals that are closely or irregularly spaced bring about increases in the number of accidents, stops, delay, fuel consumption, and vehicular emissions. Long and uniform signal spacing allows for more efficient progression throughout the corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows.

(97) "Slope" means the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(98) "Speed" refers to the posted legal speed limit at the access location at the time of permit approval. A higher speed

for access design must be used if the section of highway is presently being redesigned or reconstructed to a higher speed or an approved access control plan requires a higher speed.

(99) "Speed change lane" means a separate lane for the purpose of enabling a vehicle entering or leaving a roadway to increase or decrease its speed to a rate at which it can safely merge with or diverge from through traffic. Acceleration and deceleration lanes are speed change lanes.

(100) "State highway" includes those highways designated as state highways in Utah Code Title 72, Chapter 4, Designation of State Highways Act

(101) "Stewardship and oversight agreement" means the current agreement formalizing the roles and responsibilities of the FHWA, Utah Division and the Department in administering the Federal-Aid Highway Program. This agreement is available from the Department's website.

(102) "Stopping sight distance" means the distance required by a driver of a vehicle traveling at a given speed to bring the vehicle to a stop after an object on the roadway becomes visible. It includes the distance traveled during driver perception and reaction times and the vehicle braking distance.

(103) "Storage length" means the additional lane length added to a deceleration lane to store the maximum number of vehicles likely to accumulate in the lane during a peak hour period to prevent stored vehicles from interfering with the function of the deceleration lane or the through travel lanes.

(104) "Street" is a general term for denoting a public way or private way for purpose of transporting people, materials, and goods.

(105) "Street spacing" means the distance between intersections (signalized or unsignalized) measured as the distance between the leaving point of tangent of a street access to the receiving point of tangent of the adjacent street access.

(106) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. A major structure is a highway structure with a span or multiple span length of 20 feet or more measured along the center line of the roadway and a minor structure is the same as a major structure except it is less than 20 feet.

(107) "Taper" means a transitional area of decreasing or increasing pavement width to permit the formation or elimination of an auxiliary lane.

(108) "Traffic control equipment" means equipment, including but not limited to, traffic control signs, traffic signal poles, circuitry and appurtenant equipment.

(109) "Temporary grant of access" is required from the Department whenever a temporary driveway or connection to a state highway is sought. A temporary grant of access shall expire within twelve months of the permit issue date or before as specified in the terms, conditions, and limitations of the temporary grant of access. No extensions may be granted. To reestablish a temporary access, the permittee or applicant shall submit a new grant of access application. Unless specified, references to grant of access include temporary grants of access.

(110) "TIS" means traffic impact study, a study that may be required by the Department or local authorities that addresses the impacts of a proposed development, mitigation of impacts, access usage, or land use to ensure the efficient flow of traffic.

(111) "Traveled way" includes the portion of the roadway for the movement of vehicles.

(112) "Urban" refers to a census designated area with a population of 5,000 or more or any portion of a designated urbanized Metropolitan Planning Organization planning boundary.

(113) "Variance" is a granting of permission to depart from the standards and requirements of this rule.

(114) "Warrant" is the criteria by which the need for a treatment or improvement can be determined.

(115) "Working day" includes any weekday in which a normal day of work can be performed exclusive of delays that result from inclement weather, labor disputes, and material shortages. It does not include weekends and legal holidays.

#### **R930-6-6. Access Control.**

(1) General.

(a) This section addresses general methods, requirements and limitations utilized to manage and control access to state highways.

(2) Access categories.

(a) Access category management system. This rule provides a system of ten highway access categories to which all sections of state highways have been or will be assigned.

(i) Each access category describes the function of the highways including the operational standards that are applied to maintain the highway's function in terms of mobility, capacity, traffic flow, and safety.

(ii) The access category is assigned based on, but not limited to, evaluation of the attributes and characteristics of whether or not the facility is a part of the National Highway System, FHWA functional classification, urban or rural designation, and posted speed.

(iii) The number, spacing, type, and location of accesses and traffic signals have a direct and often significant effect on the capacity, speed, and safety of the highway and are therefore managed by this category system which establishes a hierarchy of the roadway for access management.

(iv) The spacing and design standards for each category are necessary to ensure the highway functions at the levels expected for its assigned access category.

(v) The access management standards of this rule have been developed for segments or classifications of highways that have similar context and functions. Access Management standards have been established to achieve safety, capacity, and traffic flow objectives for each classification.

(vi) Implementation of the statewide access management requirements of this rule ensures equitable, uniform, consistent, and systematic application of access management standards.

(b) Access category description. The following describe the function and application of the ten access categories used to manage access to state highways:

(i) Category 1: Freeway/interstate system facilities (I).

(A) Category 1 is appropriate for use on highways that have the capacity for high speed and high traffic volumes over medium and long distances.

(B) These facilities serve major interstate, intrastate, and inter-regional travel demand for through traffic. In urbanized and metropolitan areas, they may also serve high volume and high speed intra-city travel.

(C) All interstate and freeway facilities are included in this category.

(ii) Category 2: System priority-rural importance (S-R).

(A) Category 2 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 2 highways are designed and intended to achieve a posted speed of 55 mph or higher in areas without signals and 45 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in rural areas.

(D) Direct access service to adjoining land is subordinate to providing service to through traffic movements.

(iii) Category 3: System priority-urban importance (S-U).

(A) Category 3 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 3 highways are designed and intended to achieve a posted speed of 50 mph or higher in areas without

signals and 40 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in urban areas.

(D) Direct access service to abutting land is subordinate to providing service to through traffic movements.

(iv) Category 4: Regional-rural importance (R-R).

(A) Category 4 is appropriate for use on highways that have the capacity for moderate to high speeds (generally greater than 50 mph) and relatively high traffic volumes.

(B) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance in rural areas.

(v) Category 5: Regional priority-urban importance (R-PU).

(A) Category 5 is appropriate for use on highways that have the capacity for moderate speed (generally 45 mph or higher) and moderate to high traffic volumes.

(B) There is a balance between direct access and mobility needs within this category.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance and through urban areas that have significant potential for development or redevelopment.

(vi) Category 6: Regional-urban importance (R-U).

(A) Category 6 is appropriate for use on highways that have the capacity for moderate to low speeds (generally to a speed range of 40 mph or less) and moderate to high traffic volumes.

(B) While this category provides service to through traffic movements, it allows more direct access to occur.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of Interstate or system importance but through urban areas that are significantly developed to the point where travel speed and capacity has eroded.

(vii) Category 7: Community-rural importance (C-R).

(A) Category 7 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access. These facilities move both regional and local rural traffic but with emphasis on local movements such as those common on small city Main Streets.

(viii) Category 8: Community-urban importance (C-U).

(A) Category 8 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access.

(C) These facilities move traffic through a single community or to an adjacent community but not generally used for long distance (greater than five mile) travel.

(ix) Category 9: Other importance (O).

(A) Category 9 is appropriate for use on frontage roads, back roads, service roads, critical connections of short distance, and other special use facilities.

(x) Category 10: Freeway one-way frontage road (F-FR).

(A) Category 10 is appropriate for use on one-way frontage road systems that provide direct access to and from freeway ramps. Specifically, this category applies to the one-way frontage roads.

(B) Freeway main lane and ramp components of the freeway/frontage road systems must meet the criteria defined for Category 1 facilities.

(c) Access category assignments. To make category assignments for specific sections of state highways, the Department may consider adopted administrative and functional classifications, National Highway System routes, designated urban areas, existing and projected traffic volumes, posted and

operating speed, current and future highway capacity and levels of service, current and predicted levels of highway safety, adopted state and local transportation plans and needs, the character of lands adjoining the highway, adopted local land use plans and zoning, the availability of existing and planned vehicular access from local streets and roads other than a state highway, and other reasonable alternate access provided by municipal streets and county roads. Category assignment boundaries shall be logical and identifiable. Category assignments shall maintain highway system hierarchy and facility continuity to the extent possible.

(i) Category reviews and reassignments. Requests for changes in the access category of a state highway or sections thereof must be submitted to the Department through the appropriate local authority and metropolitan planning organization where appropriate. Such requests must include information pertaining to the factors cited in this rule for determination of category assignment and explain the need for the requested change. The explanation must also discuss how the requested change is consistent with and conforms to the purpose and standards of this rule and does not compromise the public health, safety, and welfare. A reassignment in access category may not be granted solely to accommodate eventual or planned growth of an entity, a specific access request, or to allow the permitting of access connections that would otherwise not be permitted.

(A) Local authority coordination. Upon request by local authorities, the Department shall coordinate with local authorities in the review of zoning, subdivision, and other land use regulations affecting the safety and operation of state highways to ensure that future access requirements related to local land use decisions are consistent with the purposes and standards of this rule. The issuance or approval of any permit, agreement, plat, subdivision, plan, or correspondence does not abrogate or limit the regulatory powers of the Department in the protection of the public's health, safety and welfare.

(ii) Access category inventory. The Department maintains an inventory of each section of state highway listing its access category assignment. This inventory is available from the appropriate Department Region and District office or the Department's website. Mapping inventory may not be held as the sole determination for access category assignment. Field assessment by a Department Permit Officer or designee shall verify the appropriate access category assignment.

(iii) Category updates. The Department may review the access category inventory once every five years to accommodate requests and changes in the highway environment affecting the access requirements of the highway. The initial assignment of access categories and any subsequent revision must be determined in cooperation and coordination with local authorities to ensure category assignments are compatible with preserving and maintaining the highway's intended and designed function within the state highway system and within the context of the area's transportation needs and plans.

(3) Corridor agreements.

(a) General. The Department, in cooperation with local authorities, may draft agreements for the planned and future spacing or installation of access connections based on the assigned access category for the facility. The local authorities must consider these agreements upon approval of their local development orders. A corridor agreement in the form of a signal control plan or access corridor control plan may supersede an access category assignment. The following apply to all corridor agreements including signal control plans and access corridor control plans.

(i) The corridor agreement shall balance between state and local authority transportation planning objectives and preserve and support the current and future functional integrity of the highway.

(ii) The corridor agreement must receive the approval of both the Department and the local authority to become effective. This approval shall be in the form of a written agreement signed by the local authority and the appropriate Department Region Director.

(iii) To be considered in effect, the corridor agreement shall be noted and reflected in the local jurisdiction transportation master plan.

(iv) Where a corridor agreement is in effect, all action taken in regard to the access must be in conformance with the agreement and current design standards except by approval of the Department and local authority.

(b) Signal control plan. The Department may, at its discretion, initiate, direct or develop a signal control plan for a designated portion of a state highway. The following requirements apply for signal control plans in addition to those described for corridor agreements.

(i) A signal control plan must provide a comprehensive action plan for identification of signal locations along a designated portion of state highway. This plan shall, to the extent practical, meet the functional characteristics and design standards of the appropriate access category and requirements of the Department's Traffic and Safety division.

(ii) The signal control plan must indicate the location of existing and future signalized intersections. The plan must identify signal locations intended to be modified, relocated, realigned, removed, or added. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(c) Access corridor control plan. The Department or local authority may, at its discretion, initiate, direct or develop an access corridor control plan for a designated portion of a state highway. The following requirements apply to access corridor control plans in addition to those described for corridor agreements.

(i) An access corridor control plan must provide a comprehensive roadway access design plan for a designated portion of a state highway. This plan shall, to the extent feasible and given existing conditions, bring said portion of highway into conformance with its access category and its functional needs.

(ii) The access corridor control plan must indicate existing and future access locations and all access related roadway access design elements including signals to be modified, relocated, removed, or added, or to remain. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(iii) The access corridor control plan shall include current or future accommodation for multiple transportation modes, including vehicles, bicycles, pedestrians, and public transit.

(4) Limited-access and no-access lines.

(a) Application of limited-access control lines. Limited-access control for new classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in areas of the highway being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible.

(i) Short alignments. Limited-access control may be justified for limited lengths of high volume minor arterial highways, especially on new alignments and if adjacent to a freeway interchange.

(ii) Existing urban alignments. Limited-access control in urban areas on existing alignment shall not be allowed unless approved by the Department.

(b) Application of no-access control lines. Interstate and freeway facilities shall have no-access control lines.

(c) Designation of access control lines. Determination of the final location for limited-access and no-access lines,

including final access locations, shall be made by the Department. The following requirements and limitations apply:

(i) FHWA review and concurrence for access locations is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(ii) The access openings granted shall be accurately described in the property deed and shown on right-of-way maps and roadway construction plans.

(iii) After execution of the deeds, no change may be made in the access location, use, or size or additional access openings granted except as provided in this rule.

(iv) If a portion of a property which has no access to the highway is later sold, the Department has no obligation to grant an access to the property.

(5) Local authority highway projects.

(a) Compliance requirements. A public highway reconstruction project is not required to bring legal access into full compliance with current standards of this rule, except to the extent reasonable within the limitations and scope of the project, consistent design parameters, and available public funds.

(b) Maintenance responsibility. Vehicular use and operation of local roads where they connect to (access) a state highway is the responsibility of the local authority. The local authority shall maintain such state highway access locations in conformance with this rule to the extent feasible and within statutory and public funding limitations. The local authority may fund any necessary improvements by obtaining contributions from the primary users of the access or as off-site subdivision improvements necessary for the public safety.

(c) Consolidation and modification of access. Where multiple accesses service the same ownership, public highway reconstruction projects may combine or reduce the number of accesses or modify access size and design to meet current standards.

(d) Temporary access. Temporary access within a highway project construction zone may be permissible at the discretion of the Department. A temporary grant of access is required for any new temporary access location that provides access to the traveled portion of the highway.

(e) Interference with public highway construction. Under no circumstances shall the construction or reconstruction of a private driveway by a private interest interfere with the completion of a public highway construction project. The private interest must coordinate work with the Department project engineer for the project.

#### **R930-6-7. Design Requirements.**

(1) General.

(a) The design requirements presented herein are intended to protect the functional integrity of state highways, maintain and preserve traffic mobility, provide efficient and necessary access, while protecting the public health, safety, and welfare. Designs for access connections to state highways must comply with Department standards and conform to the current MUTCD. A design based on engineering standards and methods that are more exact than those presented in this rule may be allowed if the design meets the purposes of this rule, does not violate standards of this rule, is based on desirable nationally accepted standards, and is determined acceptable to the Department. Local authority standards that are more stringent than those required by this rule may be used only if determined acceptable by the Department.

(2) General criteria for granting access.

(a) General criteria. The Department may grant modified or new access that is in compliance with this rule.

(b) Reasonable alternate access. When an application is created for access to a state highway with assigned access category 4 through 9, the access may be granted if reasonable

alternate access cannot be obtained from the local street or road system. If the proposed access does not meet design or spacing standards, the access shall be denied if the proposed access on the property has reasonable alternate access available to the general street system.

(i) Reasonable alternate access from a city or county road shall be determined in consultation with the appropriate local authority and the applicant. A determination of reasonable access from a local street or road shall include consideration of the local street or road function, purpose, capacity, operational and safety conditions and opportunities to improve the local street or road.

(ii) Where a subject property adjoins or has access to a lesser function road or an internal street system or by way of dedicated rights-of-way or easements, such access will be considered a reasonable alternate access and any access to the state highway will be considered an additional access.

(iii) Direct access to the state highway may be approved if the alternative local access will create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway will not be a safety or operational problem to the highway.

(c) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(d) Signalized intersections. The Department shall give preference to public ways that meet or may be reasonably expected to meet signal warrants in the foreseeable future.

(e) Category 1. For highways and corresponding facilities with Category 1 designations, any new access or modification of existing access shall meet freeway/interstate design practices and Department and FHWA standards and must receive FHWA approval when the Interstate Highway system is involved.

(i) All private direct access to Category 1 highways, access ramps, and structures is strictly prohibited unless specifically authorized for official temporary highway construction purposes under Department contract and must receive approval from FHWA when the interstate highway system is involved.

(ii) Public access to a Category 1 facility shall only be provided by means of interchanges properly spaced, located, and designed in accordance with Department and FHWA standards and regulations.

(iii) Any new access or modification of existing access to Category 1 facilities shall separate all opposing traffic movements by physical constraints such as grade separations and non-traversable median separators.

(iv) A new interchange or, in the determination of the Department, a significant modification to an interchange on a Category 1 facility that is part of the interstate highway System requires the preparation of analyses and reports that meet current FHWA requirements and receive approval by FHWA.

(f) Category 2 and 3. For highways with Category 2 or 3 designations, access may be allowed by means of interchanges or public street intersections. Public street access to Category 3 highways shall be signalized.

(i) The Department may allow modifications to an existing private point of access abutting a Category 2 or 3 highway including relocation of the point of access within the limits of the property, if such modification or change will benefit the operation and safety of the highway, bring the access level of the highway into greater conformance with the access category, or be in the interest of public health, safety, and welfare.

(ii) Any direct private access granted for Category 2 or 3 highways shall be for right turns only and shall be closed when reasonable alternate access is available or based on additional criteria defined by the Department in the grant of access.

(g) Category 4 through 9. For highways with Category 4 through 9 designations, direct access may be granted if the

alternative local access would create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway does not create an operational or safety problem for the state highway.

(h) Category 10. For highways with Category 10 designations, direct access shall be provided only by means of public street intersections.

(i) All private direct access to Category 10 highways is strictly prohibited unless specifically authorized for official temporary highway construction or utility maintenance and operations purposes under Department contract.

(ii) Spacing between ramps and adjacent intersections shall accommodate weaving movements and storage requirements to ensure smooth and safe operations for the frontage road.

(iii) No access shall be allowed between an exit ramp and its downstream cross-street intersection or between an entrance ramp and its upstream cross-street intersection.

(iv) No access shall be permitted within 100 feet of the intersection of freeway ramp and one-way frontage road.

(3) Access placement requirements.

(a) Spacing requirements. Table 1 summarizes the minimum required signal spacing, street spacing, driveway spacing, and interchange crossroad access spacing for corresponding state highway access categories.

TABLE 1  
State Highway Access Management Spacing Standards

Category	Minimum Signal Spacing (feet)	Minimum Street Spacing (feet)	Minimum Driveway Spacing (feet)	Minimum Crossroad to 1st Right-in Right-out Driveway (feet)	Interchange to 1st Inter-section (feet)	Access Spacing from last Right-in Driveway (feet)
1 (I)	N/A	N/A	N/A	n-a	n-a	n-a
2 (S-R)	5,280	1,000	1,000	1,320	1,320	1,320
3 (S-U)	2,640	N/A	N/A	1,320	1,320	1,320
4 (R-S)	2,640	660	500	660	1,320	500
5 (R-PU)	2,640	660	350	660	1,320	500
6 (R-U)	1,320	350	200	500	1,320	500
7 (C-R)	1,320	300	150	n-a	n-a	n-a
8 (C-U)	1,320	300	150	n-a	n-a	n-a
9 (O)	1,320	300	150	n-a	n-a	n-a
10 (F-FR)	1,320	660	N/A	n-a	n-a	n-a

"N/A" means not allowed  
"n-a" means not applicable

(i) Signal spacing. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and is thought to be one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Signals that are closely or irregularly spaced bring about increases in crashes, stops, delay, fuel consumption, and vehicle emissions. Long and uniform signal spacing allows for more efficient progression through a corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows. Signal spacing shall be as defined in this rule or as deemed necessary by the Department for the safe operation, capacity, signal progression, and proper design of the signal and adjacent accesses. Preference for the spacing, timing, and operation of a signal shall be given to highways and cross streets of a higher access category or function.

(ii) Street and driveway spacing. Access connections, including streets and driveways introduce conflicts and friction into the traffic stream of the main highway. Vehicles entering and leaving the main highway often slow the through traffic. The speed differentials between turning and through vehicles increase the potential for crashes. Increasing the distance

between intersections and driveways enhances traffic flow and safety by reducing the frequency of conflicts for the main highway and providing greater distances to anticipate and recover from turning maneuvers. Where feasible or required by this rule, accesses must be combined or closed to reduce frequency and increase spacing between accesses. The spacing must also be consistent with current signal progression efficiency and cause no degradation to existing operations.

(iii) Interchange crossroad access spacing. Freeway and expressway interchanges allow traffic to transition from freeways to arterial or other lower functioning roadways. Interchanges also serve as important focal points of roadside development in urban, suburban, and rural areas. Intersections that are too close to the arterial/freeway interchange ramp termini result in heavy weaving volumes, complex signal operations, frequent accidents, and recurring congestion. Access connections to interchange crossroads shall be sufficiently spaced to allow the smooth transition between the freeway or expressway and intersecting lower functioning roadways. The Department may require applicants to conduct a weaving or speed change lane analysis given unique area conditions. The Department may require applicants to use a distance greater than defined in this rule when said analysis shows that a greater spacing is necessary to provide safe and efficient weaving maneuvers.

(A) The following elements must be considered in determining minimum interchange crossroad access spacing distances:

(I) The distance required to weave across the through travel lanes.

(II) The distance required for transition into left-turn lane(s).

(III) The distance needed to store left turns with a low likelihood of failure.

(IV) The distance from the stop line to the centerline of the intersecting road or driveway.

(B) The minimum interchange to crossroad spacing requirements of Table 1 are based on the following definitions:

(I) "To 1st right-in right-out driveway," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first right-in right-out driveway intersection.

(II) "To 1st intersection," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first major intersection.

(III) "From last right-in right-out driveway," means the distance from the last right-in right-out driveway intersection to the interchange on-ramp gore area (point of widening on the crossroad).

(b) Emergency access. Emergency access may be granted on state highways with category 2 through 10 designations and where required by local safety regulations. Such direct emergency access may be permitted only if it is not feasible to provide the emergency access to a secondary roadway. Requests for such access must include a written explanation with references to local standards from the local authority safety official. Emergency Access may not be granted to accommodate general vehicular ingress or egress. The access shall be gated and locked.

(c) Agricultural access. Agricultural access may be granted to state highways with access to category 2 through 9 designations and where, in the determination of the Department, the property has no other reasonable alternate access. Additional agricultural access to property under the same ownership or controlling interest may be granted if the necessity for such additional access due to topography or ongoing agricultural activities is demonstrated. Agricultural accesses must be kept to the minimum necessary to provide access service. Agricultural access must meet minimum access design

and safety standards of this rule. A change in use of the parcel of land serviced by the agricultural access may require that the access be closed. The spacing criteria between accesses contained in this rule may be waived for agricultural access. All such agricultural accesses must meet the sight distance criteria of this rule.

(d) Access near at-grade railroad crossings. Access near an at-grade railroad crossing must not be located closer than 250 feet from the crossing. Circumstances may exist where greater spacing is required consistent with the appropriate access category spacing. See R930-5 for more information.

(e) Shared access. Shared access of two or more parcels may be required where a proposed new access or the redesign of an existing access does not meet spacing standards and criteria for the appropriate access category. The access location shall serve as many properties and interests as possible to reduce the need for additional direct access to the state highway.

(f) Offset placement. Where proposed or redesigned access connections which are offset and not separated by a non-traversable median are to be considered, every effort must be made to align opposing driveways and streets.

(g) Challenging topography. Where existing topography or other existing conditions make the required access spacing intervals not feasible, the Department may consider topography, established property ownerships, unique physical limitations, unavoidable or pre-existing historical land use patterns, and physical design constraints with a reasonable attempt to achieve the required access spacing.

(h) Access to limited-access facilities. Under limited-access control, the following additional limitations shall apply. Where there are conflicts between the following limitations and other requirements of this rule, the more stringent requirement shall be met.

(i) The maximum feasible and economic access control must always be obtained.

(ii) On bypasses of cities and towns, all property access shall be prohibited except where the bypass is in a low population town with little or no business and where inadequate public crossroads for property access exists.

(iii) Other than on bypass roads, a maximum of five accesses per mile on each side of the highway may be granted. Accesses to property shall only be granted opposite to each other.

(iv) Where any property has access to another public road or roads, no access shall be given closer than 1/2 mile from the public road nor shall any two granted accesses be closer than 1/2 mile. However, where the proposed project involves reconstruction on or near an existing highway where a home, business or other property development is located and lack of direct access to a home, business or other property development would involve excessive property damage and added construction costs, access openings may be provided within the other stated limitations.

(4) Access design requirements.

(a) Sight distance. Access points must be located and designed to provide adequate sight distance along the state highway and the access.

(i) Access design must meet AASHTO sight distance guidelines and Department standards.

(ii) Potentially obstructing objects, including but not limited to, advertising signs, structures, trees, and bushes must be designed, placed, and maintained to meet sight distance requirements for vehicles using the access.

(iii) Modifications to the existing highway may be required for access points with less than the required minimum sight distance. Modifications may include, but are not limited to, changes to horizontal or vertical alignments, addition of acceleration or deceleration lanes, roadway relocation, use or creation of other general street system facilities, or other

modifications as required by the Department.

(b) Access width. Access width shall be designed and constructed to properly accommodate the anticipated traffic volumes, lane geometries, and vehicle characteristics of both the access and the adjoining highway.

(i) Minimum and maximum access widths (feet):

(A) Commercial or industrial land uses:

(I) Two-way direction use: 25 feet minimum to 50 feet maximum.

(II) One-way direction use: 16 feet minimum to 30 feet maximum.

(B) Residential land uses:

(I) Two-way or one-way direction use: 16 feet minimum to 30 feet maximum.

(C) Agricultural uses:

(I) Two-way or one-way direction Use: 16 feet minimum to 32 feet maximum.

(ii) One-way approaches. The Department may treat adjacent one-way approaches (one-way in, one-way out) as one access when all of the following conditions are met:

(A) The one-way approaches are divided by a non-traversable median at least four feet wide but no more than 25 feet.

(B) Signing for the access median is clear and visible.

(iii) Future public streets. Applications for an access point intended to become a future public street access must consider long-term traffic projections, modal use, and agency standards to determine appropriate access widths.

(iv) Private openings for limited-access highways. The maximum size of private access openings shall be 16 feet for residences, 30 feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(c) Access radii. The turning radii of an access must accommodate the turning radius of the largest vehicle using the access on a regular basis.

(i) Minimum and maximum radii ranges:

(A) Commercial, industrial, or agricultural land uses:

(I) Urban areas: 30 feet minimum to 60 feet maximum.

(II) Rural areas: 20 feet minimum to 60 feet maximum.

(B) Residential land uses:

(I) Urban areas: 10 feet minimum to 15 feet maximum.

(II) Rural areas: 20 feet minimum to 30 feet maximum.

(ii) Where possible, applicants shall reduce the access radii to improve visual and physical separation of accesses and to reduce pedestrian conflicts by reducing the total access width at the roadway edge (i.e., at the intersection). Access radii shall be no larger than required to accommodate the volume and type of vehicles using the access on a regular basis.

(iii) Curb cut style driveways are typically required where curbs are present. However, radius curb returns may be used when determined by the Department to be necessary and consistent with existing or planned conditions.

(iv) Access points intended to become a future public street access may use the design criteria of the local authority and the Department to select appropriate radii, corner and intersection design. Access designs are subject to approval by the Department.

(d) Driveway profile. Driveways must be designed to minimize slope changes to prevent dragging and must conform to Department standards, including standard drawing GW-4-series.

(e) Driveway vertical curves. Driveway vertical curves must be as flat as feasible and at least 20 feet long. To prevent dragging, the following driveway vertical curve designs are prohibited:

(i) A hump or dip greater than 6 inches within a wheelbase of 10 feet.

(ii) Crest vertical curves exceeding a 3-inch hump in a 10-

foot chord.

(iii) Sag vertical curves exceeding a 2-inch depression in a 10-foot chord.

(iv) Rolled gutters crossed by traffic.

(f) Driveway angle. Driveway angles less than 80 degrees are prohibited. Whenever possible, driveways must provide a right (90-degree) driveway angle.

(i) Exceptions. For one-directional use driveways with a right-turn entry-only or a right-turn exit-only operation, driveway angles may not be less than 60 degrees. Whenever possible, these one-directional driveways must provide a right (90-degree) driveway angle.

(g) Access signing. Traffic control devices for accesses that serve the general public must conform to the current MUTCD. Stop or yield signs are required for all street intersections and driveways when warranted by traffic conditions.

(h) Emergency access. Emergency access features must be designed to accommodate emergency vehicle characteristics appropriate for the development or intended land use and in conformance with the Department driveway standards, including those defined in this rule. However, emergency access widths may be designed to serve one-way traffic and may be less than 16 feet wide.

(i) Emergency access surfacing must minimize its visibility while still providing sufficient strength.

(ii) Emergency access must be designed based on the standards of the local emergency services and accommodate emergency vehicles necessary to serve the site.

(iii) Emergency access must provide a suitable barrier to eliminate non-emergency use. The access must be signed for emergency services only and shall only be opened during emergencies.

(iv) The access, including but not limited to barriers and signing, shall be maintained by the permittee.

(v) Emergency access barriers shall not be placed within the state highway right-of-way.

(i) Other design elements. The Department may require other design elements or features to ensure accesses are designed and constructed in a manner that will encourage proper operations and safety. Additional design elements and features include, but are not limited to, the following:

(i) Positive barrier. The Department may require access with turn restrictions to provide positive barrier such as a non-traversable median to prevent unauthorized turns. Intersection or driveway islands that channel traffic movements may be required for turn-restricted movements when any of the following apply.

(A) No restrictive center median is in place or programmed to be constructed.

(B) When frequent violations of the turn restrictions are anticipated.

(ii) Parking and site circulation. Accesses must be designed to facilitate turning movements to and from the highway while preventing vehicle queues on the highway.

(A) Parking or storing vehicles within the state highway right-of-way is prohibited. Roadside businesses must provide sufficient private parking or storage space to handle their corresponding parking needs.

(B) No access may be granted for parking areas that require backing maneuvers within the state highway right-of-way. Circulation for parking facilities must be arranged to restrict backing onto the state highway and allow vehicles to enter and exit the site in forward drive. This requirement does not apply to residential single unit driveways.

(C) Accesses that have or are planned to have a gate across it, must be designed so the longest vehicle using the access can clear the highway when the gate is closed. For locations with prohibitive topographical features, applicants must provide a

wide shoulder for temporary standing while the gate is operated.

(D) The Department may require the review of the parking lot and circulation layout and require designs, terms, and conditions necessary to ensure the safe use of the access.

(iii) Modal considerations. Access designs must provide for the safe and convenient movement of all highway right-of-way users and modes of transportation including but not limited to pedestrians, bicyclists, transit, and the physically challenged. Sidewalks and bike lanes or paths may be required where deemed appropriate by the Department or when required by the local authority.

(iv) Storm drainage. All new or modified accesses must make provisions for site retention, detention, or accommodation of site originating surface run off such that no flow of storm water or spill shall utilize the state highway drainage system unless by prior analysis and agreement.

(A) Applicants must construct all driveways and buffer areas to maintain a positive drainage system within the highway right-of-way and not alter the stability of the roadway sub-grade.

(B) The Department is not liable for the quality of drainage waters originating at service stations or special industrial processing plants that are directed into irrigation canals through highway drainage system. Such drainage concerns are the subject of separate agreements and permits by the developers and irrigation companies.

(v) Roadside development lighting equipment. All lighting equipment for the roadside development must be placed outside the highway right-of-way. Directing light beams toward the eyes of approaching drivers on the highway is prohibited.

(5) State highway design requirements.

(a) General. This section describes the Department requirements for highway features located within the rights-of-way of any state highway. Highway features include, but are not limited to, traffic signs and street name signs, traffic signals, traffic control equipment, highway lighting, crosswalks, curb and gutter, sidewalks, and pavements. Installation of new features within the highway right-of-way and modifications to existing highway features necessary as part of permitted work must be completed at the expense of the permittee and in accordance with plans approved by the Department. Any damage to existing highway features must be repaired or restored at the expense of the permittee and in accordance with plans approved by the Department. Any work completed within state highway right-of-way must comply with Department standards and conform to the current MUTCD.

(i) Site specific requirements. For specific sections of state highway, the Department may provide additional requirement details for access design and construction, including but not limited to, pavement thickness and specifications, curb design and specifications, roadway fill design and compaction, testing and inspection, and other specific details.

(ii) Posted speed. A proposal for access may not presume a lower posted speed limit than currently posted or request a lower speed limit in order to accommodate the access unless specifically directed in writing by the Department. Where a traffic signal will be installed as part of the access construction, the access design and the anticipated posted speed limit after signal installation may be used for the overall access design at the discretion of the Department.

(b) Traffic signals. The installation of permanent traffic control devices, including but not limited to traffic signals is regulated by the MUTCD and Department guidelines and standards.

(i) Nothing in this rule is intended to require the Department to authorize a traffic signal or other permanent traffic control device.

(ii) The Department may, at its discretion, complete the installation of permanent traffic control devices. The permittee shall pay for direct costs and labor provided by the Department

for the installation and relocation of all traffic control devices within public right-of-way which are directly related to the use or construction of the permitted access.

(iii) Signal location, timing, and operation are not intended to serve or benefit single use or private access connections. Preference to signal location, timing and operation shall be given to highways and cross streets of a higher access category or function.

(iv) New traffic signals and modifications to existing traffic signals shall be allowed only as approved by the Department. No traffic signal may be authorized without the completion of an analysis that is sealed (stamped) by a Professional Engineer licensed in the State of Utah and meets MUTCD signal warrants and all requirements of the Department. The traffic signal analysis must consider traffic signal system operation, design, construction feasibility, and safety.

(v) For existing or proposed accesses that meet MUTCD warrants and the Department requirements for signalization, but do not meet the spacing or placement requirements of this rule, the access shall be reconstructed to conform to appropriate design criteria and eliminate or reduce the traffic movements that caused the traffic signal warrant to be met.

(vi) Where the access may warrant signalization in the future, phasing of the installation may be required.

(vii) The Department may, at its discretion in consideration of granting access, require design, and operational modifications, restrict one or more turning movements, or deny access.

(viii) Category 2 and 3. For state highways with Category 2 or 3 designations, signals at intersections with major cross streets or roads of equal importance may be programmed to optimize traffic on both streets equally. Cross-streets of lesser importance need not be optimized equally. Traffic signals must be programmed to allow a desirable highway bandwidth of at least 50 percent. The efficiency of the signal system must be analyzed utilizing traffic volume, capacity, and level of service calculations. The analysis must determine the optimum progression speed under both existing and proposed conditions.

(ix) Category 4, 5 and 6. For state highways with Category 4, 5, or 6 designations, where it is not feasible to meet one-half mile spacing and where signal progression analysis indicates good progression (40 percent efficiency or better), or does not degrade the existing signal progression, a full movement intersection may be allowed. In such cases, a variance and subsequent traffic study is required. Spacing to nearby intersections must be sufficient to accommodate the future vehicle storage queues for both turning and through movements. The access location must also meet other access spacing, design, and need requirements of this rule.

(c) Surface. The permittee must appropriately surface driveways and connections between the traveled way and the service area. For accesses adjoining paved highways, the permittee must pave the access surface to the right-of-way line. Pavement materials used within the state highway right-of-way shall meet Department standards and requirements.

(i) Preservation of new pavement. The Department may not issue permits to cut or excavate on newly constructed, paved, or overlaid state highways. This preservation restriction applies for a period of two years after installation of pavement or overlay. Exceptions to preservation of new pavement restrictions shall be made only in cases of emergency, and only with the approval of the appropriate Department Region Director or designee.

(d) Median treatments. A raised median or movement channelization may be required.

(i) Nothing in this rule is intended to require the Department to authorize a left turn movement at any location.

(ii) Left turn movements may not be permitted if a median

is already established and the proposed opening of the median does not provide, in the determination of the Department, any significant operational or safety benefits to the general public or will be counter to the purpose of the median construction and the continued function of the highway at the category assigned to it.

(iii) A median opening may not be allowed if any of the following apply:

(A) A safety or hazard situation is likely or identified.

(B) The location is within the functional area of an existing or planned interchange, signalized intersection, or major unsignalized intersection.

(iv) Category 2 and 3. For state highways with Category 2 or 3 designations, Left turn movement may be permitted if all of the following apply:

(A) Access does not have potential for signalization.

(B) Travel is circuitous in one direction that exceeds two miles.

(C) Left turn movement can be designed to the Department's satisfaction that meets all safety, design, and operational standards.

(v) Category 4, 5, 6, 7 and 8. The following apply for state highways with Category 4, 5, 6, 7 or 8 designations:

(A) If a restrictive median exists, left turns at unsignalized intersections shall be restricted unless the restriction of these movements will cause a safety or operations problem or cause an out-of-direction movement of greater than one mile (or one-half mile for state highways with Category 6, 7, or 8 designations).

(B) If a flush or traversable median exists, left turns may be permitted unless an operational or safety problem is identified.

(e) Auxiliary lanes. Auxiliary lanes for state highways must conform to Department Standards, including standard drawing DD-series.

(i) Auxiliary lanes may be required where any of the following apply:

(A) An auxiliary lane has been specifically identified and documented necessary to prevent or correct an operational or safety condition that will be associated with traffic imposed by the creation of a new access or an existing access.

(B) Any of the following apply for an access to an access category 2 or 3 highway:

(I) A left turn lane with deceleration, storage, and taper lengths is required for any access with a projected peak hour left turn ingress turning volume greater than 5 vehicles per hour.

(II) A right turn lane with deceleration and taper lengths is required for any access with a projected peak hour right turn ingress turning volume greater than 10 vehicles per hour.

(III) A right turn lane with acceleration and taper lengths is required for any access with a projected peak hour right turning volume greater than 10 vehicles per hour.

(IV) A left turn acceleration lane may be required if such a design will be a benefit to the safety and operation of the roadway.

(V) Left turn acceleration lanes are generally not required where the posted speed is less than 50 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(C) The following applies for an access to an access category 3 highway:

(I) Left turn acceleration lanes are generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(D) The following apply for an access to an access category 4 or 5 highway:

(I) A left turn deceleration lane with taper and storage length is required for any access with a projected peak hour left

ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the required deceleration length.

(II) A right turn deceleration lane and taper length is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the required deceleration length.

(III) A right turn acceleration lane and taper length is required for any access with a projected peak hour right turning volume greater than 50 vehicles per hour when the posted speed on the highway is greater than 40 mph. The taper length must be included in the required acceleration length. A right turn acceleration lane may also be required at a signalized intersection if a free-right turn is needed to maintain an appropriate level of service for the intersection.

(IV) Right turn deceleration and acceleration lanes are generally not required on roadways with three or more travel lanes in the direction of the right turn.

(V) A left turn acceleration lane may be required if it will be a benefit to the safety and operation of the roadway.

(VI) A left turn acceleration lane is generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(E) Any of the following apply for an access to an access category 6, 7, 8, or 9 highway

(I) A left turn lane with storage length plus taper is required for any access with a projected peak hour left ingress turning volume greater than 25 vehicles per hour. If the posted speed is greater than 40 mph, a deceleration lane and taper is required for any access with a projected peak hour left ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the deceleration length.

(II) A right turn lane with storage length plus taper is required for any access with a projected peak hour right ingress turning volume greater than 50 vehicles per hour. If the posted speed is greater than 40 mph, a right turn deceleration lane and taper is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the deceleration length.

(F) The following apply for an access to an access category 10 highway:

(I) Exclusive turning lanes are required for all intersections. At a minimum all street accesses must provide an exclusive right turn lane with a minimum length of 250 feet, exclusive of tapers. Longer storage lengths may be necessary based on traffic analysis. Left turn lane dimensions to be defined through traffic analysis. Taper and deceleration lengths to meet current Department standards for posted speeds.

(ii) For specifically identified and documented safety and operation reasons, a turn acceleration or deceleration lane may also be required based on any of the following location factors:

(A) Volume of commercial trucks.

(B) Influence of nearby access.

(C) Highway speed and traffic density access volume.

(D) Existing highway auxiliary lanes close to the access.

(E) Nearby traffic control devices.

(F) Available stopping sight distance.

(G) Topographic and highway design factors.

(iii) For access locations with high percentage of truck use, the Department may require corresponding auxiliary lanes be built to full length and width and the transition taper length extend beyond the full length.

#### **R930-6-8. Access Application Procedures and Requirements.**

(1) General.

(a) Current standards. Applicant must use the most recent editions of engineering and state standards and best practices,

including but not limited to those cited in this rule.

(b) Compliance responsibility. It is the responsibility of the applicant to demonstrate the application meets the requirements of this rule. Requirements for grant of access refer to the applicant's responsibility to obtain a grant of access approval from the Department before being granted access to a state highway.

(c) Approvals and environmental compliance. Applicants must comply with all Federal, State, and local authority approvals and laws, including environmental laws before the Department can grant a permit.

(d) Site plan. A site plan approval by a local authority does not entitle the applicant to access a state highway. Grant of access from the Department does not imply endorsement or approval of the submitted site plan.

(e) Multiple accesses. A grant of access application may cover multiple access connections serving a site.

(f) Review periods. Failure of the Department to comply with the review periods defined in this rule shall not preclude the Department from approving or denying any application.

(g) Encroachment permit. Grant of access approval does not allow the applicant to construct the access. An encroachment permit must be obtained prior to any construction in the state highway right-of-way.

(h) Movement restrictions. A grant of access does not guarantee a right of full movement access. The Department may, at its own discretion, require access movements to be restricted.

(2) Conditions requiring grant of access.

(a) Access changes. A grant of access is required whenever a new driveway, other curb cut, or local street connection is sought on a state highway. This applies to proposals to construct a new vehicular access, modify or relocate an existing access, or to close an access on the state highway right-of-way.

(b) Change in land use type and intensity. A grant of access is required when there is a change in land use or a change in the land use intensity of an existing access.

(i) Change of land use. A change in land use includes any land use change that requires a change in zoning, site plan, or conditional use approval by the local authority.

(ii) Change of intensity of land use. A change of intensity of land use is considered to have occurred when an existing land use intensifies as described below. The applicant must use current ITE Trip Generation procedures or other Department accepted methodology to identify this change. A level of change requiring a grant of access is a trip generation that exceeds 100 peak hour trips or 500 daily trips or a change in trip generation of 20% or greater relative to existing conditions. If the property is vacant for more than twelve months, the trip generation for that property is considered zero. A grant of access is also required if trip generation change causes a change in the Access Application Level.

(c) Modification or improvement by local authorities. A grant of access is required for new or modified public access to the state highway (such as county roads and municipal streets).

(i) Access to subdivisions and other developments must be processed in the same manner as a private access and applied for pursuant to this rule, until the access is constructed, completed, and accepted as a public access and public way by the local authority.

(ii) The local authority shall be considered the applicant for requests submitted by local authorities for a new or modified public access. A private development may not apply for a private driveway with the local jurisdiction as the applicant.

(iii) Where a private development accessing the roadway of a local authority necessitates access improvements and where the private access shall become and operate as a local roadway connecting to a state highway, the applicant may either be the

local jurisdiction, the developer, or a combination, at the discretion of the local authority. The corresponding application must identify the intended connection on the local jurisdiction transportation master plan

(iv) Appropriate requests submitted by local authorities shall be administered by the Department by one of the following:

(A) As provided in this rule for any applicant (including non-public applicants);

(B) By special written agreement; or

(C) By contract between the Department and the local authority.

(d) Transfer of Additional Right-of-Way and Improvements. The increased intensity of traffic associated with a proposed access may require the transferring of new state highway real property and highway improvements to handle the traffic associated with the proposed development. The Department may require the applicant to transfer real property, improvements and highway appurtenances when an essential link exists between a legitimate governmental interest and the transfer of the mitigation requirements and the mitigation requirements are roughly proportionate to the impact of the proposed development. In some instances where the transfer of real property is not feasible, the Department may require the applicant to pay for the mitigation of the development impacts to the highway. Additional right-of-way necessary for the state highway improvements, including but not limited to, travel lanes, turn lanes, and auxiliary lanes, are to be conveyed without cost to the Department by dedication or by a warranty deed in a form acceptable to the Department. The Department may accept a perpetual easement for facilities or improvements located outside of the highway right-of-way. If the applicant transfers the property by warranty deed, all rights, title and interests are conveyed to the Department. The applicant shall provide a title policy for the real property to be transferred to the Department. The title policy shall only contain exceptions approved by the Department. If the property is being dedicated through a plat, the property shall not have any encumbrances that are not approved by the Department. The Department may refuse to accept the transfer of real property if the property has unacceptable encumbrances, contains hazardous substances or other conditions of the property. The real property must be in compliance with all applicable state and federal statutes, regulations and rules.

(e) Temporary grant of access. A temporary grant of access is required for any temporary driveway or connection to a state highway. A temporary driveway or connection may be granted to accommodate actions associated with site construction or development. The term of the temporary grant of access shall be noted on the permit.

(3) Pre-application coordination.

(a) Department primary contact. The Region permits officer or other designated employee of the Department shall be the primary contact for the applicant. Direct inquiries regarding an application or review must be directed to this person.

(b) Local agency coordination. To apply for a grant of access, it is recommended that applicants work closely with the local authority's land use approval division and the appropriate Department Region permitting office.

(c) Pre-application meeting. Prior to submitting an application, applicant must contact the appropriate Department Region permitting office to schedule a pre-application meeting. A pre-application meeting provides Department personnel and local authorities an early opportunity to examine the feasibility of the access proposal with the applicant and to consider whether it is permissible under the Department's standards, the requirements of this rule and requirements of locally adopted access plans. The applicant is advised to consult with the Department during the pre-application meeting to determine the

appropriate access category, access application level, traffic impact study requirements, and other application requirements. An application may be submitted anytime after the pre-application meeting.

(i) Meeting is not binding. The pre-application meeting is not binding to the Department or the applicant. Information presented and findings generated during the pre-application meeting may be documented and confirmed in a written notification. However, any pre-application written notification or communication from the Department shall not be considered binding.

(ii) Number of meetings. For typical access applications, one pre-application meeting shall be provided in regards to a specific access application. A second pre-application meeting may be allowed at the Department's discretion to address complex access situations, or to include other affected jurisdictional partners. Additional meetings shall not be held until after the application has been submitted and the appropriate fee has been rendered.

(4) Application requirements.

(a) State highway access category. The applicant must identify and note the appropriate access category assignment for the application. Upon submittal of the application, the Department shall verify the access category assignment. The Department shall make the final determination on the appropriate access category assignment.

(b) Access type. The applicant must note on the application the type of access requested. Access types are defined based on the applicant's property land use and include agricultural, residential, industrial or commercial accesses.

(c) Connection service type. The applicant must note on the application the type of physical connection requested. The connection may serve either a private or public street or private or public driveway connection.

(d) Limited-access and no-access lines. The Applicant must identify any Limited-Access and No-Access lines adjoining the property. The Department makes final determination whether an established line of Limited-Access or No-Access exist in the area in which access is sought.

(e) Permit type. The applicant must identify the type of access permit requested for the site. Permit types include grant of access, temporary grant of access, and encroachment. Procedures and requirements for the encroachment permit are included in Subsection R930-6-8(8) of this rule. The application process for a grant of access and temporary grant of access are the same. A temporary grant of access may be requested alone or in conjunction with a grant of access for a site.

(f) Access application level. The applicant must identify the level of application required for the site. The level of application required is based on the size and magnitude of the project being proposed by the applicant. The application levels define specific threshold elements related to required applicant site plan elements, permitting process, permitting schedule, applicant fees, traffic impact study requirements, and other permit related issues. The applicant must declare all property within the application area to which they hold interest, including, but not limited to, property to be developed. The application levels are based on anticipated changes to state highway facilities and site-generated traffic volumes for daily (ADT) or peak hour time periods. Higher application levels are required when the construction of the proposed access would require significant modifications to elements of a state highway. The Department reserves the right to determine at its own discretion which modifications are considered minor or significant. Generally, the Department will consider modifications to traffic signals, pedestrian ramps, and sidewalks to be minor modifications. For convenience, application level thresholds are also presented in terms of standalone land use

intensity. Land use intensities are based on published ITE Trip Generation rates. The Department may require the applicant to provide more precise trip generation estimates to determine the appropriate access application level for mixed land use or complex developments.

(i) Application level I thresholds. Applicant shall meet the requirements of application level I if the projected site generated traffic is less than 100 ADT and there are no proposed modifications to traffic signals or elements of the roadway. Stand alone land use intensities corresponding to application level I site generated traffic thresholds include the following:

- (A) Single Family: < 10 units.
- (B) Apartment: < 15 units.
- (C) Lodging: < 11 occupied rooms.
- (D) General Office: < 9,000 square feet.
- (E) Retail: < 2,500 square feet.

(ii) Application level II thresholds. Applicant shall meet the requirements of application level II if the projected site generated traffic between 100 and 3,000 ADT or less than 500 peak hour vehicle trips and there are minor modifications to traffic signals or elements of the roadway. Standalone land use intensities corresponding to application level II site generated traffic thresholds include the following:

- (A) Single Family: 10 to 315 units.
- (B) Apartment: 15 to 450 units.
- (C) Lodging: 11 to 330 occupied rooms.
- (D) General Office: 9,000 to 270,000 square feet.
- (E) Retail: 2,500 to 70,000 square feet.
- (F) Gas Station: < 18 fueling positions.
- (G) Fast Food: < 6,000 square feet.
- (H) Restaurant: < 26,000 square feet.

(iii) Application level III thresholds. Applicant shall meet the requirements of application level III if the projected site generated traffic between 3,000 and 10,000 ADT or between 500 to 1,200 peak hour vehicle trips or there is a proposed installation or, in the determination of the Department, significant modification of one or more traffic signals or elements of the roadway, regardless of project size. Standalone land use intensities corresponding to application level III site generated traffic thresholds include the following:

- (A) Single Family: 316 to 1,000 units.
- (B) Apartment: 451 to 1,500 units.
- (C) Lodging: 331 to 1,100 occupied rooms.
- (D) General Office: 270,001 to 900,000 square feet.
- (E) Retail: 70,001 to 230,000 square feet.
- (F) Fast Food: 6,000 to 20,000 square feet.

(iv) Application level IV thresholds. Applicant shall meet the requirements of application level IV if the projected site generated traffic greater than 10,000 ADT or there is a proposed installation or, in the determination of the Department, significant modification of two or more traffic signals, addition of travel lanes to the state highway or proposed modification of freeway interchange, regardless of project size. Standalone land use intensities corresponding to application level IV site generated traffic thresholds include the following:

- (A) Single Family: > 1,000 units.
- (B) Apartment: > 1,500 units.
- (C) Lodging: > 1,100 occupied rooms.
- (D) General Office: > 900,000 square feet.
- (E) Retail: > 230,000 square feet.

(g) Reasonable alternate access. The applicant shall identify any and all reasonable alternate access for the subject site.

(i) Determination of reasonable access. Reasonable local access shall be determined in consultation with the appropriate local authority and as defined in this rule.

(ii) Limited-access and no-access lines. When applications are made for properties adjoining a state highway with a limited-access or no-access line, reasonable alternate

access shall be afforded through the use of other existing or planned facilities in consultation with the appropriate local authorities and their transportation master plan.

(h) Traffic impact study (TIS). The applicant is responsible for performance and delivery of an acceptable traffic impact study. The TIS shall be completed by an individual or entity demonstrating capability to analyze and report mobility, traffic engineering elements, and design elements as necessary for the application study area and site design.

(i) Conditions requiring a TIS. A TIS is required for all grant of access applications. A TIS is required for modifications to existing state highway traffic control equipment. A TIS may also be required for encroachment permit applications. For access application levels I and II, the Department may, at its own discretion, waive requirements for a TIS. Applicants wishing to waive the requirement for a TIS must submit a written request, including justification for waiving the requirement for a TIS. Requirements for a TIS for access application levels III and IV shall not be waived.

(ii) Purpose of the TIS. The purpose of the TIS is to identify system and immediate area impacts associated with the proposed connection(s). A traffic study is necessary to identify, review, and make recommendations for mitigation of the potential impacts a development may have on the roadway system.

(iii) Study area of the TIS. The TIS must include any proposed or existing access or connection within an area identified by the Department. Determination of the extent of the TIS study area is at the discretion of the Department. The study area may be defined by, but not limited to, an identified safety problem, accident review, congested locations, or as a result of a change in land use or access in accordance with an application. The study area may also be defined by the size and intensity of the development and surrounding development and by a travel time boundary, area of influence, parcel boundaries, physical boundaries, or political boundaries.

(iv) Scope of the TIS. The TIS must, at a minimum, incorporate traffic engineering principles and the standards as presented in this rule. Additional requirements and investigation not specifically identified in this rule may be imposed upon the applicant as necessary. In general, the TIS scope must achieve the following:

(A) Present project overview of the proposed development including information such as site location and proposed access point(s), phased and full development trip generation, connection point design elements, adjacent and relevant development, existing and future traffic volumes, assessment of the system impacts, and mitigation measures as appropriate.

(B) Document whether or not the access request can meet the standards and requirements of this rule and other applicable regulations.

(C) Analyze appropriate location, spacing, and design of the access connection(s) necessary to mitigate the traffic.

(D) Analyze operational impacts on the highway and permissible under the highway's assigned access category and in accordance with applicable requirements and standards of this rule.

(E) Recommend the need for any improvements to the adjacent and nearby roadway system to maintain a satisfactory level of service and safety and to protect the function of the highway system while providing appropriate and necessary access to the proposed development.

(F) Assure that the internal traffic circulation of the proposed development is designed to provide safe and efficient access to and from the adjacent and nearby roadway system consistent with the purpose of this rule.

(G) Analyze and recommend the means for land uses to minimize their external transportation costs to the traveling public through traffic improvements necessitated by that

development as well as making the fullest use of alternative travel modes.

(5) Application submittal.

(a) Application and attachments. Applicants must submit to the appropriate Department Region permitting office, the complete application including any required attachments reasonably necessary to review and assess the application and complete the application review process. Required attachments may include detailed site plans, maps, traffic studies, surveys, deeds, agreements, documents, and other data to demonstrate compliance with this rule. Maps and site plans to be submitted may include, but are not limited to utilities in the vicinity of the access and utilities to be moved. The Department shall determine the scope of the attachments necessary for application submission based on the identified access application level.

(b) Site or development overview. Applications must provide a description of the site/development including site plan and overview materials such as preliminary maps, plans, and documents to illustrate the site, the size and type of proposed land use, estimated traffic volumes, vehicle types generated by the site, adjacent public roads and highways, adjacent properties, and any existing or available access points. The application must include all the information and materials requested at the pre-application meeting.

(c) Document ownership. All submitted applications become the property of the Department. The Department may not request items without relevance to the approval or denial of the application. If the applicant is other than the fee surface rights owner of the property to be served, the applicant shall include sufficient evidence of concurrence or knowledge in the application by the fee surface rights owner and proof of development rights (i.e. option to buy, federal use permit). The applicant shall give complete names, addresses, and telephone numbers of the property owner(s), the applicant(s), and primary contact person, on the application along with the expected dates of construction and commencement of use of the access.

(d) Corporate or agency applicant. When the owner or applicant is a company, corporation, government agency or other entity, the application must provide the office, title, and the name of the responsible officer. A corporation must be licensed to do business in the State of Utah.

(e) Misrepresentation. Intentional misrepresentation of existing or future conditions or of information requested for the application for the purposes of getting a more favorable determination is sufficient grounds for the rejection or denial of the application or revocation of a granted access and encroachment permit.

(f) Application fees. A fee shall be assessed for the review and assessment of the grant of access and temporary grant of access application.

(i) The Department shall establish and collect a reasonable schedule of fees for the review and administration of grants of access and construction permits pursuant to this rule. The permit fee schedule shall not exceed the cost of the review and administration of the application. The appropriate application fees may be found in the Department schedule of fees.

(ii) The application review may not proceed until payment has been received by the Department. The application shall not be considered submitted until payment has been received.

(6) Application review and approval.

(a) Completeness review. The Department shall review the application to verify that the required information has been submitted. If the Department determines an application to be incomplete, the applicant shall be notified in writing including by, but not limited to, email notification. The notice shall include any outstanding items, issues, or concerns given the available information. Upon receipt of the Department's letter requesting more information, the applicant shall provide additional data and information as appropriate, or withdraw the

application. The applicant is required to submit the necessary information as determined by the Department to complete the application within six months from the date the application was submitted. Otherwise the application is considered withdrawn.

(b) Completeness review period. The typical completeness review period is ten working days. This review period begins when the applicant submits a completed application packet with all required components for approval and has rendered the appropriate nonrefundable application fee. Once additional requested information is submitted, or resubmitted, by the applicant the ten-day completeness review period starts over.

(c) Application review. The Department shall begin processing the application when the application has been identified as complete. The Department shall use this rule and any other applicable state and federal laws, policies, or guidelines to evaluate and act on the application. If during the review of the application it is found that additional information for review is necessary, the Department shall address in writing to the applicant the need for additional information. Written notification may include, but not be limited to, email notification. The application review period may be lengthened or begin again when the applicant submits significant additional information.

(d) Signatures. When this rule or related official forms require the signature of the permittee(s) or applicant, the signatures shall be that of the specific individual or if a corporation or partnership or other entity, the duly authorized officer or agent of the corporation or partnership or other entity. The applicant shall include the name of the corporation, partnership, or entity with the signature.

(e) Application review period. The typical application review period is forty-five working days.

(f) Action by the Department. As determined by the standards of this rule, the Department may grant the access as proposed, require layout, design and location modifications as it considers appropriate, restrict one or more turning movements as necessary to reduce traffic and safety impacts, or deny the access.

(i) The application shall be denied if the proposed access cannot meet the requirements or standards of this rule including consideration of appropriate variance criteria or other applicable laws. If the Department denies the application, the Department shall provide a written explanation of the decision.

(ii) Upon access approval, the Department shall prepare a grant of access document and transmit it to the applicant.

(iii) The issue date of the grant of access shall be the date the Department representative signed the grant of access.

(g) Grant of access expiration. A grant of access shall expire if the access construction is not completed within twelve months of the permit issue date or before the expiration of any authorized extension. When the permittee is unable to complete construction within twelve months after the permit issue date, the permittee may request a six-month extension from the Department. No more than one six-month extension may be granted under any circumstances. The applicant must submit request for an extension in writing to the Department before the permit expires. The request shall state why the extension is necessary, when construction is anticipated, and include a copy of the grant of access approval. Extension approvals shall be in writing and may include, but not be limited to, email documentation. To reestablish an access approval that has expired, the applicant shall begin the application procedures again. The Department shall maintain a copy of the grant of access issued for as long as the granted access is in existence pursuant to the grant of access.

(7) Additional requirements for limited control lines.

(a) Applicable procedures and standards. The following procedures and standards apply to requests for modification of a Limited Access or No Access line.

(i) No-access lines. A modification of a no-access line is only allowed to create a general or local street connection as proposed by the local authority where no other reasonable alternate access to abutting property can be provided.

(ii) Limited-access lines. Only in cases where, in the determination of the Department, significant public benefit is expected may new access openings be granted through established Limited-Access lines. A request for a new or modified access opening shall be submitted by the property owner or local authority in writing to the Department and must clearly identify the proposed public benefit resulting from for the access opening.

(iii) If there are other justifications for the access opening that are not solely for the public's benefit, the applicant shall identify those justifications and any public interests served by those justifications.

(iv) Upon review of the application, the Department, in its sole discretion, shall determine whether there is a sufficient public benefit to justify allowing the proposed new or modified access opening.

(b) Extended review period. While most requests for a new access opening may be reviewed within 45 days, additional review time may be needed. There is no fixed amount of time that the Department may take to review a request to create or modify an access opening. Complex or incomplete requests may take longer than 45 days to review and approve or deny.

(c) Corridor agreements. Requests to modify a limited-access line may require the applicant to produce or provide analysis for a signal control plan or access corridor control plan. Requests to modify a no-access Line must include a signal control plan agreement or access corridor control plan agreement.

(i) If no such agreement exists, the applicant must complete an analysis that the Department may use to create or modify a signal control plan or access corridor control plan.

(ii) The Department, local authorities and, if one exists, the Metropolitan Planning Organization, must ratify signal control plan and access corridor control agreements.

(iii) Signal control plans and access corridor control plans must be consistent with the local authority's transportation master plan. Such plans must also conform to the Metropolitan Planning Organization's plans and designs.

(d) Approval or denial decision. Upon recommendation of Department staff, the Department Deputy Director or designee shall approve or deny the grant of access request for changes to limited-access lines or no-access lines and send notice of the decision to the applicant. FHWA review is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(e) Fees and reimbursements. The Department considers access control rights an asset that is purchased and can be sold. Any approved changes to limited-access or no-access lines requires reimbursement to the Department of its fair market value. If the access opening is approved and is to serve private property, the property owner shall pay the Department for property appreciation, resulting from the Department's relinquishment of the access. The appreciation of the private property involved shall be determined by an independent licensed appraiser as listed within the Department's certified pool of approved appraisers. The property appraisal must show the property valuation before the access is created or modified (the before condition) and after the access is created or modified (the after condition). The difference in the appraised property valuation in the before condition, when compared with the appraised property valuation in the after condition, determines the current fair market value for the access, which shall be the price of the access. Because appraised access valuation costs are a major consideration for any development-related initiative,

it is considered a best practice for the applicant to obtain the appraisal at the beginning of the grant of access application process. Upon approval to modify a limited-access line or no-access line, the applicant must pay the fair market value of the access right acquired from the Department. The property owner shall also pay all costs for construction of gates, approaches and any other incidental construction costs involved.

(f) Recorded deed. The applicant shall execute and record the grant of access on the appropriate property deed indicating the access opening. The applicant shall revise all maps and plans. This procedure applies to roads constructed with federal-aid funds, which will remain on a federal-aid system and be transferred to local authorities.

(g) Review considerations. Department and, if applicable, FHWA staff shall investigate safety and other operational features and impacts of the request review and comment on the following:

(i) Finding or demonstration of no reasonable alternate access and,

(ii) Providing the access connection to a local street system or an identified local street system on which:

(A) The opening is identified on the local master street plan,

(B) The opening provides continuity to other local streets,

(C) The opening provides reasonable alternate access via the local system,

(D) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(iii) Identifying the access on an agreed local signal control or access corridor control plan on which:

(A) The opening provides continuity to other local streets,

(B) The opening provides reasonable alternate access via the local system, and

(C) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(h) Revision of access openings. If a property owner desires to change the location, use or size of an access opening, after execution of the deed, a new application must be submitted to the Department giving the location of the desired change and its justification. Changes shall comply with the standards and requirements of this rule.

(i) The Department shall evaluate the application to determine if the change in location, use or size will cause any adverse safety or other traffic operational effects and submit a report with recommendations to the Deputy Director.

(ii) If the change is approved by the Deputy Director and by FHWA for federal-aid roads, new deeds shall be prepared and executed and all maps corrected.

(iii) The property owner shall pay for all costs involved in closing or modifying an existing access opening.

(iv) Requests for modification of access control shall be forwarded with recommendations to the Department by the local authority.

(8) Encroachment permit requirements.

(a) General. No work on the state highway right-of-way may begin until an approved encroachment permit is issued by the Department and the permittee is authorized in writing to proceed. Written authorization may include, but not be limited to, email.

(i) Prior to any construction, the applicant must receive approval for an encroachment permit (related to the grant of access approval) with appropriate traffic control, construction plans, bonds, and insurance requirements. The applicant must attach a copy of the grant of access document to the encroachment permit application.

(ii) In addition to procedures and requirements defined herein, all of the application procedures defined for grant of access application within this rule, including review periods, apply to applications for an encroachment permit.

(iii) All construction materials, techniques, and processes shall be in conformance with the terms, conditions, and limitations of the permit and consistent with Department requirements and standard specifications.

(b) Permit fees. A fee shall be assessed for approved encroachment permits. The Department may not authorize the permittee to begin work on the state highway until the permit fee is paid.

(c) Notice of construction and work completion time-frames. The permittee shall notify the Department at least two working days prior to any construction within state highway right-of-way. The permittee shall execute access construction in an expeditious and safe manner. Access construction must be completed within ninety days from initiation of construction within the highway right-of-way.

(d) Phased construction of access. Upon request, the phasing of the installation of access design requirements may be allowed if the average use of the access at any time does not exceed the constructed design and the Department or local authority is provided monetary or legal guarantees that access approval terms, conditions and limitations shall be met prior to any use of the access exceeding the existing design of the access.

(i) The following items may be used to provide the monetary or legal guarantees referenced above:

(A) Posting a bond.

(B) Irrevocable letter of credit.

(C) Certificates of deposit.

(D) Inclusion in zoning ordinance.

(E) Inclusion in subdivision plats or land use permit requirements.

(F) Inclusion in the deeds to the properties involved.

(G) Any other techniques as approved and accepted by the Department.

(ii) All such arrangements shall be included as terms and conditions of the permit.

(iii) The local authority and Department may record notices in the county records of such agreements to inform future property owners of potential liabilities and responsibilities.

(iv) If the project is to be phased over time, the schedule, location and other details of each phase must be provided as part of the application for an encroachment permit.

(e) Traffic control. The permittee shall provide appropriate construction traffic control devices at all times during access construction in conformance with the MUTCD and Department standard drawings for traffic control.

(i) The applicant shall provide traffic control plans detailing the location, duration, design, use, and traffic controls of the access.

(ii) Construction may not commence until the traffic control plan has been approved by the Department.

(iii) Traffic control plans must be sealed (stamped) by a Professional Engineer licensed in the State of Utah or, when determined appropriate by the Department, a certified Traffic Control Supervisor.

(iv) Traffic control plans must conform to the current MUTCD and Department requirements and standards, including Department Traffic Control Standards and Specifications.

(v) Traffic control plans must address the following:

(A) Construction phasing.

(B) Lane/shoulder closures.

(C) Tapers and device spacing.

(D) Sign boards, arrow boards, and variable message signs.

(E) Temporary modifications to traffic signals.

(F) Time restrictions and work schedule.

(G) Lane shifts.

(H) Flagging operations.

(vi) Traffic control plans may be revised as necessary with Department concurrence.

(vii) The Department may establish a fee schedule to charge an hourly fee or daily fees for the closure of any travel lanes necessary for the construction of a private access. The purpose of the fee is to encourage the quick completion of all work that reduces highway capacity and safety or interferes with the through movement of traffic.

(f) Professional evaluation. For any permit involving changes to state highways or structures, the Department may require the permittee to hire a Professional Engineer licensed in the State of Utah to inspect the access and state highway and structures carefully and to affirm to the best of their knowledge and belief that the construction is in compliance with the permit, Department specifications, materials construction monitoring and testing, and to report any item that may not be in compliance or cannot be determined to be in compliance and the nature and scope of the item relative to compliance. The Department may require testing of materials at the permittee's expense. When so required by the Department or as specified on the permit, test results must be provided to the Department.

(g) Construction operations. Installation of highway and access elements must be in compliance with all Department requirements for grant of access and encroachment permits, the Department standard drawings and the state or local health ordinance specifications for culverts, catch basins, drainage channels, and other drainage structures.

(i) Applicant must ensure adequate sight distance for traffic operation and comply with the requirements of the Department approved traffic control plans during all construction operations.

(ii) Applicant must provide proper drainage, suitable slopes for maintenance operations, and good appearance during construction operations.

(iii) Trees, shrubs, ground cover, or other landscape features may need to be removed, replaced, or suitably adjusted.

(iv) Applicant must free the construction buffer area, as defined by Department traffic control standards from any encroachment that will hinder traffic. Applicant must grate or landscape the buffer area between driveways to prevent use by vehicles while protecting clear sight across the area.

(9) Withdrawn applications.

(a) No payment. A permit shall be deemed withdrawn if the Department has not received the signed copy of the permit or fee payment, if any, from the applicant within forty-five days of the date of approval transmittal.

(b) Non-responsive applicant. The application shall be deemed withdrawn if the applicant fails to provide requested documents, plan alterations, or similar application components as required by the Department within sixty days of such a request. The clock for a non-responsive applicant starts anytime the Department provides the applicant a written request for additional information, plan alterations, or other application components deemed necessary to effect further review of the application. Written requests for additional information may include, but are not limited to, email. Prior to deeming a nonresponsive application withdrawn, the Department shall make a minimum of three direct contact attempts in approximately two week intervals to advise an applicant that their access approval is in jeopardy of being terminated. Contact attempts may be made in person, via email, written letter, or phone call.

(c) Resubmission. Once an application is deemed withdrawn, the applicant must:

(i) Submit a new application.

(ii) Include a complete re-submittal of the current plans and studies.

(iii) Pay a new application fee.

### **R930-6-9. Variances and Appeals.**

(1) General.

(a) This section describes procedures and requirements for applicants to request a variance from the standards and requirements of this rule. This section also describes the procedures to appeal the Department's decision to deny a grant of access or encroachment permit request.

(b) Variations from provisions of this rule may be allowed if they do not violate state and federal statutes, laws, or regulations and the Department has determined there is no reasonable alternate access and the access and use of the state highway right-of-way will not compromise the safety and operation of the of the state highway.

(2) Variance requests.

(a) Application submittal. A variance may be considered for any design standard of this rule that is not applicable or feasible given the proposed physical and operational characteristics of the site. Applicants seeking a variance from the standards and requirements of this rule must submit a thoroughly detailed variance request as an attachment to the grant of access or encroachment permit application. The Department may allow a request for a variance as a supplement to a previously submitted application if the Department determines that it is in the public interest to do so.

(i) General requirements. The applicant is responsible to demonstrate that the variance request meets minimum acceptable engineering, operation, and safety standards is not detrimental to the public health, welfare, and safety and is reasonably necessary for the convenience and welfare of the public.

(A) The request for a variance must specify, in writing, why the variance is appropriate and necessary. The request must include documentation of conditions with and without the variance and documentation showing that the applicant has considered all practical mitigation alternatives and demonstrate that better alternatives in terms of highway operations are not feasible or do not exist. A variance from the spacing standards shall not be considered unless the subject property and proposed access points cannot achieve the minimum spacing standards under the appropriate access category and no other reasonable alternate access can be afforded the site.

(B) The applicant must show that the variance request results from the application of the standards or requirements of this rule and is not self-created or self-imposed (such as by the applicant acting with or without knowledge of the applicable standard or requirement).

(ii) Existing non-conforming access. Non-conforming modifications to an existing highway access that is either in use or can demonstrate historical use and does not comply with the provisions of this rule, may be allowed when the applicant demonstrates to the Department that the proposed access point(s) modifications will improve the operation and safety of the highway. Consolidation of access points is considered to benefit the highway operations and is encouraged. Where there are multiple accesses serving a site, the Department shall consider a 50 percent reduction (rounded up for odd numbers) to demonstrate an improvement to operations of the highway.

(iii) Limited-access and no-access facilities. Variance requests to modify a limited-access line or no-access line shall include detailed reports of appraisals, costs and justification for the variance. A request to modify a limited-access line or no-access line shall be treated as a request for variance. The Department may consider variances from the provisions of this rule for limited-access facilities when a careful appraisal reveals extensive damage, or if needed frontage roads would involve excessive right-of-way costs or construction costs.

(b) Department review considerations. The Department shall not grant variances that, in the Department's determination, pose hazards to public mobility, health, safety, and welfare. The

Department shall not grant variances for procedural requirements. The Department shall review the variance request for consistency with the purposes of this rule. The Department shall consider the following specific factors in determining that the granting of a variance will not negatively impact the current and proposed operation of the highway:

(i) The applicant has considered all other feasible alternatives to provide reasonable alternate access to the property or development and can demonstrate that better alternatives in terms of highway operations are not feasible or do not exist.

(ii) The applicant has considered access through a shared use driveway or access point with an adjacent land use and such a shared use access is not feasible.

(iii) The applicant is providing on-site or off-site traffic improvements that might offset the negative impacts of granting an access that does not meet the provisions of this rule.

(iv) The applicant has considered and demonstrated trip reduction strategies that allow the access to properly function without creating a negative impact to the highway.

(v) The applicant has provided traffic engineering or other studies to determine that the access will not degrade the efficient flow of traffic on the highway in terms of safety, capacity, travel speed, and other functional features of the highway.

(c) Department review period. The review periods defined within this rule for grant of access applications shall apply to request for variance applications.

(d) Department documentation. The Department shall include in its files documentation of reasons for approving or denying a variance request.

(e) Limitations and conditions of variance approval. An approved grant of access or encroachment permit may stipulate conditions and terms for the expiration of the permit when the necessity for the variance no longer exists. It may also require the permittee to improve, modify, eliminate, or correct the condition responsible for the variance when it is evident that the justification for the variance is no longer valid. Such stipulations and requirements shall be stated in the approved permit.

### (3) Appeals.

(a) Applicant appeal rights. The applicant may appeal the Department's decision only if the Department has denied a grant of access, encroachment permit or variance request. Any appeal of Department action must comply with this rule, R907-1, and Utah Code Title 63G Chapter 4, Administrative Procedures Act. The Assistant Attorney General shall assist the Department Region Director during the hearing and drafting of the final order.

### **R930-6-10. Conditions of Right-of-Way Use.**

#### (1) General.

(a) This section describes conditions that apply to all connections, encroachments, and uses of the state highway right-of-way. The conditions and requirements of this section are in addition to other conditions, limitations, and requirements of this rule and the grant of access and encroachment permit.

#### (2) Right-of-way encroachment requirements.

(a) Prohibited right-of-way uses. The state highway right-of-way shall not be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of advertising, or conducting of private business.

(b) Buildings and structures. The placement of buildings or structures of any type within state highway rights-of-way is not allowed unless authorized by a permit obtained from the Department.

(c) Advertising. Private advertising or business endeavors on federally funded or other state highway rights-of-way are prohibited.

(i) No part of the state highway right-of-way may be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of private advertising or to conduct private business.

(ii) Special advertisement may be allowed within the state highway right-of-way if it will not compromise traffic flow or safety and will be in the public interest. A permitted encroachment to occupy the right-of-way for such advertising may be issued, for a time not to exceed one week. All such special advertisement shall not conflict with any provisions of Utah's Outdoor Advertising Act.

(d) Mailboxes. Installation of new mailboxes must be approved by the appropriate Department Region Director or an authorized representative. All new mailboxes placed within a state highway right-of-way must be constructed in conformance with Department standard drawings GW-7 and GW-8. Existing mailboxes located within the state highway right-of-way must be maintained or corrected to conform to the Department standards. Owners of mailboxes deemed nonconforming shall be notified in writing by the Department Region Director or an authorized representative. Within thirty days of receipt of notice, the owner must, at its own expense, reconstruct the mailbox or otherwise correct any deficiencies to conform to current safety standards and regulations of the Department. The Department may contact the postmaster and stop delivery of mail until compliance is achieved. Mailboxes may be deemed nonconforming for the following:

(i) Mailboxes that constitute a traffic hazard are considered nonconforming.

(ii) Mailboxes and supports that are in poor repair and detract from the appearance of the highway may be considered nonconforming.

(iii) Any part of a mailbox that is over 50 inches high is considered nonconforming

(iv) Any part of a mailbox that is located within the shoulder is considered nonconforming.

(v) Mailbox supports that exceed any of the following criteria are considered nonconforming:

(A) Wood support with over 16 square inches cross-sectional area.

(B) Metal support with greatest dimension over 3.5 inches.

(C) Metal pipe support of over 2 inches in diameter.

(D) Other metal supports deemed to be a hazard by the appropriate Department Region Director or an authorized representative.

(e) Special limitations. All encroachments on state highway, including permits issued for special encroachment, are subject to the following conditions and limitations:

(i) Red or reddish colored lights. Red or reddish colored decorations or advertising lights are not permitted within the right-of-way.

(ii) Clearance over highway surface. Any decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item placed within the right-of-way must have a minimum clearance of 20 feet.

(iii) Utility poles. Attach no decorations, displays, flags, banners, colored lights, handbills, structures or other advertising or decoration items may be attached to a utility facility without written permission of the appropriate entity or owner.

(iv) Highway control obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may block the normal view of any official highway sign or other traffic control device and signals.

(v) Shapes similar to highway control devices. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may be of such shape, size, color or design similar to any Department traffic control sign, signal, marking or device.

(vi) Attachments to traffic signals. No attachments of any type may be allowed on traffic signals.

(vii) Sight obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may obstruct the normal view of traffic nor may obstruct, impede or endanger the normal flow of traffic. In accordance with Utah Code Section 41-6a-216 "Removal of plants or other obstructions impairing view, Notice to owner - Penalty," owners of real property next to state highway rights-of-way shall be ordered to remove any trees, plants, shrubs, or any other obstructions that obstruct the view of motorists and thereby constitute a hazard.

(3) Department changes to existing access.

(a) The Department may, when necessary for the improved safety and operation of the roadway, rebuild, modify, remove, or relocate any access or redesign the highway including any auxiliary lane and allowable turning movement.

(i) The Department shall notify the permittee or current property owner of the change.

(ii) Changes in roadway median design that may affect turning movements normally does not require a hearing because a grant of access approval confers no private rights to the permittee regarding the control of highway design or traffic operation even when that design affects access turning movements.

(iii) In order to eliminate public road access, a study shall be made in conjunction with local authorities for a feasibility of dead ending or rerouting of intersecting roads.

(4) Permittee requirements and limitations.

(a) Grant of access limitations. The granting of an access approval conveys no rights, title, or interest in state highway rights-of-way to the permittee or property served. A grant of access for direct access to a state highway does not entitle the permittee to control or have any rights or interests in any portion of the design, specifications or operation of the highway or roadway, including those portions of the highway built pursuant to the terms, conditions and limitations of the grant of access.

(b) Completion requirements. Prior to using the access, the permittee is required to complete the construction according to the terms, conditions and limitations of the grant of access and encroachment permit. Department approval is required if the permittee wishes to use the access prior to completion.

(c) Access transferability and maintenance. The permittee, his or her heirs, successors-in-interest, assigns, and occupants of the property serviced by the access is responsible for meeting the terms, conditions and limitations of the permit, including, but not limited to the following maintenance requirements:

(i) Ensuring that the use of the access to the property is not in violation of this rule and terms, conditions and limitations of the permit.

(ii) Repairing and maintaining the access beyond the edge of the roadway, including any cattle guard and gate.

(iii) Removing or clearing snow or ice upon the access, including snow or ice deposited on the access in the course of Department snow removal operations.

(iv) Repairing and replacing any access-related features within the right-of-way, including culverts. Any significant repairs, such as culvert replacement, resurfacing, or changes in design or specifications requires authorization from the Department.

(d) Notification of changes. The permittee shall contact the Department if changes are made or will be made in the use of the property which would affect access operation, traffic volume, or vehicle type to determine if a new grant of access and/or modifications to the access approval are required.

(e) Indemnification requirements. Permittees shall, at all times, indemnify and hold harmless the Department, its employees and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance,

repair, operation, or use of an access or other facility.

(f) Insurance, bonding and letter of credit requirements. The permittee is responsible for the maintenance of the construction performed within the state highway right-of-way for a period of three years from the date of beginning work or two years from the end of work, whichever provides the longer period of coverage.

(i) Insurance. Permittee is required to have in force a liability insurance policy, naming the Department as an additional insured in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. Failure to meet this requirement for the life of the permit shall result in permit revocation.

(ii) Bonding. As authorized by Utah Code Subsection 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a performance and warranty or maintenance bond, using the Department's approved bond form, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A performance and warranty bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms, conditions and limitations of previous permits issued as determined by the Department. The amount of the bond is determined by the Department Region Permits Officer based on the scope of work being performed but will not be less than \$10,000.00.

(iii) Proceeds Against Bond. The Department may proceed against the bond to recover all expenses incurred if payment is not received from the permittee within forty-five calendar days of receiving an invoice. Upon discovery of permittee caused damage to the highway or to the right of way, the Department may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to permittee caused damages. Failure by the permittee to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the closure of the access to from the state highway right of way.

(iv) Letter of credit. For small projects, the Department may accept an irrevocable letter of credit as reasonable security in lieu of bonding. A letter of credit shall be issued by a federally insured bank authorized to do business in Utah and shall be placed in the possession of and payable upon demand only to the Department. A letter of credit shall be irrevocable during its terms and shall be automatically renewable, or the applicant shall insure continuous coverage by replacing letters of credit, if necessary, at least thirty days before their expiration date with other acceptable bond types or letters of credit.

(5) Existing interests.

(a) Historical interest. The Department recognizes that pre-existing property interests within the state highway rights-of-way may exist. Proof of a pre-existing property interest within a public right-of-way must be provided to the Department in the form of a duly executed deed, grant or other document establishing the same are required to establish prior right or title of the entity or person. In the absence of such proof, it shall be assumed that the entity or person occupies the right-of-way under permit (i.e., by permission), and enjoys no vested interest in the state highway right-of-way. In those instances when the Department requires an entity or person with a pre-existing property interest to move completely or partially off the right-of-way, the Department shall make appropriate remuneration for the relinquishment of that interest.

(i) The adoption of this rule by the Department does not constitute an acceptance or recognition of pre-existing property interests.

(ii) The Department assumes no liability associated with these interests and uses; either for the safety to users or the traveling public, damage to property, or for the continued use

thereof.

(b) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(c) Permittee improvement of existing access. The property owner or authorized representative served by a lawful access may make physical improvements to the access per the requirements of this rule and only with the written permission of the Department. Denial of the application for improvements does not constitute revocation of the existing access authorization. Denial of an application to enlarge, relocate, or modify an existing lawful access, in no way impairs the permit for or right to the existing access for its legal historical use.

72-7-103  
72-7-104  
72-7-105  
72-7-503

**R930-6-11. Enforcement.**

(1) Access violations enforcement.

(a) The Department may install barriers across or remove any access that it determines to be unlawful. Costs incurred by the Department to install barriers or remove access must be reimbursed by the permittee before the access is restored.

(b) When an access is constructed or used in violation of this rule, the Department may suspend an access approval and immediately order closure of the access. Costs incurred by the Department in closing an access shall be reimbursed by the permittee.

(c) When an access is constructed without prior grant of access, the Department may impose a fine or fee. The Department may order immediate closure of the access. The offender shall reimburse costs incurred by the Department in closing an access.

(d) Upon detection of unauthorized modifications to limited-access lines, the Department shall contact the property owner and require the owner to restore the state highway right-of-way, including, but not limited to, any damaged fences.

(e) Highways with limited-access control may be marked by the Department with public property plates on fences at sufficient intervals to clearly indicate to maintenance personnel the limits of access control.

(2) Permit violations enforcement.

(a) Abuse or noncompliance of a grant of access or encroachment permit shall be subject to enforcement through fine and corrective measures.

(b) Failure by the permittee to abide by all permit terms, conditions and limitations is sufficient cause for the Department to initiate action to suspend or revoke the permit and close the access. The Department may suspend the permit for cause if it determines failure to comply with or complete the construction requirements of the permit create a highway safety hazard. The Department may order a halt to any unauthorized use of the access pursuant to statutory and regulatory powers. Reconstruction or improvement of the access may be required when the permittee has failed to meet required specifications of design or materials.

(c) Failure of the permittee to pay the Department for costs related to the Department's installation or relocation of traffic control devices within a reasonable period may be considered grounds for permit suspension that may lead to revocation and access removal.

**KEY: access control, permits**

**March 9, 2013**

**Notice of Continuation November 2, 2016**

41-6a-216  
41-6a-1701  
72-1-102(11)  
72-1-201  
72-3-109  
72-4-102.5  
72-6-117  
72-7-102

**R933. Transportation, Preconstruction, Right-of-Way Acquisition.****R933-2. Control of Outdoor Advertising Signs.****R933-2-1. Purpose.**

The purpose of this rule is to implement the Utah Outdoor Advertising Act Sections 72-7-501 through 72-7-516. Nothing in this rule shall be construed to permit outdoor advertising that would disqualify the state for federal participation of funds under the applicable federal standards or conflict with the Utah Outdoor Advertising Act. The Transportation Commission and the Utah Department of Transportation shall, through designated personnel, control outdoor advertising on controlled routes throughout the State of Utah.

**R933-2-2. Definitions.**

All references in this rule to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned sign" means any controlled sign of which the sign face has been partially obliterated, dilapidated, has unsafe conditions or has remained blank or been removed for a continuous period of 12 months or more, and the sign owner does not have a pending and active application with the department or a local governmental authority to repair or rectify the condition.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. On-ramps and off-ramps are part of the interchange and shall not be considered an acceleration or deceleration lane under the Act or this rule.

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, and the message is designed, intended, or used to advertise or inform, and the message is visible from any place on the main traveled-way of a controlled route.

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(6) "Changeable Electronic Variable Message Signs" or "CEVMS" means a self-luminous advertising sign which emits or projects any kind of light, color, or message. Such a sign has the capability of being changed or altered by electronic means on a fixed display screen composed of a series of lights including light emitting diodes (LEDs), fiber optics, plasma displays, light bulbs, or other illumination devices within the display area.

(7) "Conforming sign" means an off-premises sign maintained in a location that conforms to the size, lighting, spacing, zoning, and other requirements as provided by law and this rule.

(8) "Contiguous" means a property that shares a common property line with another property.

(9) "Controlled route" means any route where outdoor advertising control is mandated by the Act, the Utah-Federal Agreement R933-5, or other state or federal law.

(10) "Controlled sign" means any off-premises sign that is designed, intended, or used to advertise or inform and which is located and the advertising thereon is visible within a controlled outdoor advertising corridor as specified by state or federal law.

(11) "Customary Maintenance" means any change, replacement, manipulation, or other repair to the sign structure

that does not:

(a) alter or change the overall height, location, material, sign face orientation or sign face size (except for temporary embellishments);

(b) add lighting relative to what is currently listed on the valid permit or change the sign face to a CEVMS, or

(c) require structural engineering review.

(12) "Feeder systems" are secondary city or county roads that bring traffic to the state highway.

(13) "Freeway" means a divided highway for through traffic with full control access.

(14) "Good standing" means the controlled sign is properly maintained, all program and permit-related fees are paid as specified in this rule, and current sign owner contact information is up to date with the department.

(15) "Grandfather status" refers to any off-premises controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and this rule. Signs only, and not sign sites, may qualify for Grandfather Status.

(16) "H-1" means highway service zone as defined in the Act.

(17) "Lease or consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

(18) "Nonconforming sign" means a sign that was lawfully erected, but that does not conform to state law or rules enacted at a later date or that later fails to comply with state legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

(19) "Off-Premises Sign" means an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.

(20) "On-Premises Sign" does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.

(21) "Point of the gore" means the point of the area delineated by two solid white lines that is between a permanently constructed continuing lane of a through-roadway and a permanently constructed lane used to enter or exit the continuing lane, including similar areas between merging or splitting highways.

(22) "Property" as used in the definition of "On-Premises Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in assembling, manufacturing, servicing, or repairing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.

(23) "Public park" means any publicly owned land that is designed or used as a recreation area, wildlife or waterfowl refuge, or historical site.

(24) "Sale or lease sign" means any sign situated on the subject property that advertises that the property is for "sale" or "lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

(25) "Scenic area" as used in the Act includes a scenic byway.

(26) "Transient or temporary activity" means any industrial or commercial activity, not otherwise herein excluded, that does not have a prior continuous history for a period of six months.

(27) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

(28) "Written notification" as described under Subsection 72-7-506(2)(a) is further defined to include email notification. An outdoor advertising permit holder may request in writing to receive notice via United States Postal Service.

#### **R933-2-3. Permit Required.**

(1) All controlled signs legally in existence prior to the effective date of the 1967 Act, or that are legally created thereafter, shall have a permit issued by the department.

#### **R933-2-4. General Requirements.**

(1) Permits shall be issued in accordance with the Act and as described by this rule.

(2) Permits may be issued only for signs that are to be erected in areas allowed by local, state and federal law.

(3) All permits shall be maintained in good standing with the department for the duration of the sign's existence.

(4) Until the application is considered complete by the department, the department shall not process the application.

(a) If the application is deemed incomplete by the department, the department will send a notice notifying the applicant of the deficiencies of the application.

(b) The applicant will have 30 days from the notification date to make the application complete per the instructions on the application.

(c) If the applicant does not submit the required information to make the application complete within 30 days from the notification date the application will be returned to the applicant as incomplete without being processed.

(d) During the time the applicant is completing the application, the department will not consider or review any subsequently-received New Outdoor Advertising Permit Application for the same general location, where granting one permit would preclude the other.

(e) If multiple incomplete New Outdoor Advertising Permit Applications are submitted to the Department at the same time for the same general location, and granting one permit will preclude granting any other, the first application to be completed will receive priority over any other. The Department shall serve notices of deficiencies on the applicants simultaneously.

(5) If multiple complete New Outdoor Advertising Permit Applications are submitted to the Department at the same time for the same general location, the first application received will have priority over any other.

(6) Where the local authority has issued a building permit for construction of a sign, but construction is contrary to the Act, the action of the local authority does not require the state to issue a permit.

(7) The crossing of a right-of-way line of any controlled route for access at other than an established access approach to erect, alter or maintain a sign without the written permission of the department, is unlawful.

(a) The first documented offense the permit holder will receive a warning notice.

(b) The second documented offense will result in a Notice of Agency Action.

(c) The third documented offense will result in permit revocation.

(8) Any sign located within the controlled area of two controlled routes shall meet the spacing requirements of both highway systems.

(9) If a sign message may be read from two or more routes, one or more of which is a controlled route, the more stringent of applicable control requirements applies.

(10) New sign structure or adjusted sign structure location requires the proposed location to be staked by the applicant prior to submitting any application. The applicant shall mark the center-point(s) of the support pole(s) of the proposed location with a clearly visible stake and a ribbon. The stake shall have the sign owners name clearly identified on it.

#### **R933-2-5. Commercial and Industrial Usage Limitations for Unzoned Areas.**

(1) Airport runways or parking or aircraft tie down areas are not commercial or industrial activities.

(2) Farming or ranching areas or related dairy farm facilities, of whatever nature, are not commercial or industrial activities.

(3) Municipal or private golf courses or cemeteries are not commercial or industrial areas.

(4) A trailer or mobile home park, court, or facility are not commercial or industrial areas.

#### **R933-2-6. New Application Requirements.**

(1) The applicant shall submit a completed application on the approved departmental form (Outdoor Advertising Permit Application) in accordance with the instructions listed on the application. At a minimum, the applicant shall include the following items:

(a) Each application shall be accompanied by a valid and approved building permit or special use permit from the local governing authority, or a written statement from that authority indicating the building permit or special use permit is not required under its ordinances for the proposed sign.

(b) Written proof of lease, easement, ownership, or consent from the property owner to erect and maintain an outdoor advertising sign shall be furnished by the applicant.

(i) Proof of ownership may consist of a sworn declaration showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county; and

(ii) Proof verifying legal access to the sign location from private property, for purposes of maintaining the controlled sign, is also required.

(c) The Application's Location Sketch Addendum shall be completed and attached in accordance with the instructions contained thereon.

(d) The Application's Zoning Verification Addendum shall be completed and signed by the local zoning authority.

(e) The appropriate non-refundable new application review fee shall be submitted with the completed application.

(2) All new approved permit applications require the applicant to commence construction of the sign structure within 180 days from the date of the department approval and shall complete all work within 365 days from the date of the department approval.

(3) The final approval of the new approved permit application will not occur until (a) the applicant notifies the department of its completion and (b) the applicant has forwarded photographs to the department depicting the entire sign structure (including a photograph showing each individual sign face).

(4) It shall be the sole responsibility of the sign owner to ensure the final placement of the sign is not encroaching anywhere within the department's established right-of-way.

(5) A retroactive permit fee penalty shall be charged in addition to the non-refundable new application review fee to cover the additional administrative review and inspection costs where an applicant is seeking a state permit for an existing sign that did not have prior written approval.

#### **R933-2-7. Permit Transfer Application Requirements.**

(1) A permit is transferable in accordance with Utah Code

Section 72-7-507.

(2) Within 90 days of the sale or transfer of ownership of a controlled sign the new sign owner shall submit a completed application on the approved departmental form (Outdoor Advertising Permit Ownership Transfer Application) in accordance with the instructions listed on the application. At a minimum, the applicant shall include the following items:

(a) The new sign owner shall provide the department proof of sign ownership.

(b) Written proof of lease, easement, ownership, or consent from the property owner to maintain an outdoor advertising sign shall be furnished by the applicant.

(i) Proof of ownership may consist of a sworn declaration showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county; and

(ii) Proof verifying legal access to the sign location from private property, for purposes of maintaining the controlled sign, is also required.

(3) The appropriate non-refundable permit transfer fee shall be submitted with the completed application.

(4) If an ownership transfer application is not submitted to the department within 90 days of the sale or transfer the new sign owner shall submit a new permit application, with the appropriate non-refundable application review fee and any corresponding late fee.

#### **R933-2-8. Sign Alteration Application Requirements.**

(1) Any sign alteration-related activity that is not defined as customary maintenance requires the sign owner to submit an Outdoor Advertising Sign Alteration Application.

(2) Anyone preparing to remodel a controlled sign shall submit a completed application on an approved departmental form (Outdoor Advertising Sign Alteration Application). The form shall be completed in accordance with the instructions on the application. At a minimum, the applicant shall include the following items:

(a) Each application shall be accompanied by a valid and approved building permit or special use permit from the local governing authority, or a written statement from that authority indicating the building permit or special use permit is not required under its ordinances for the proposed sign.

(b) The Application's Location Sketch Addendum shall be completed and attached in accordance with the instructions contained thereon.

(c) The Application's Zoning Verification Addendum shall be completed and signed by the local zoning authority.

(d) Evidence from the sign owner confirming the sign owner has legal access to the sign location from private property, for purposes of alteration and maintenance of the controlled sign.

(e) The appropriate non-refundable application review fee shall be submitted with the completed application.

(3) All approved alteration(s) shall commence within 180 days from the date of the department approval and shall complete all work within 365 days from the date of the department approval.

(4) A retroactive permit fee penalty shall be charged in addition to the non-refundable application review fee to cover additional administrative and inspection costs where an applicant is seeking an alteration permit for a sign that has been altered without prior written approval.

(a) If the sign alterations are not approved the permit holder will return the sign to the original recorded approved permitted state for size and structure.

(5) A conforming or nonconforming sign that is damaged by vandalism or an act of God may be re-erected or changed, or both, upon properly completed Outdoor Advertising Sign Alteration Application and approval of the application.

(a) Nonconforming sign located on a scenic-by-way that is damaged by vandalism or an act of God may only be repaired to the original recorded approved permitted state for size and structure.

#### **R933-2-9. Permit Renewal Requirements.**

(1) Permits shall be renewed by the filing of a renewal application and submission of the appropriate non-refundable renewal fee before the first day of July during the designated billing cycle year.

(a) Permits not renewed by the first day of July during the designated billing cycle year are considered suspended.

(i) Suspended permits for conforming and non-conforming signs may be renewed upon submittal of the renewal application, appropriate non-refundable renewal fee, and late fee. The submittal must be received by September 30 of the current billing cycle year.

(ii) The department shall issue a Notice of Agency Action for suspended permits not renewed by September 30 of the current billing cycle year providing the sign owner a voluntary correction time frame prior to revoking the permit. The department shall provide this notice via certified mail to the sign owner as identified within the official sign inventory records maintained by the department.

(2) A renewal time extension may be provided to the sign owner upon the sign owner submitting a written request to the department before the first day of July during the designated billing cycle year. The department may approve such a time extension at the department's sole discretion. Any such extension shall not exceed 30 days in length. Additional time extensions beyond 30 days may only be considered where the department determines extraordinary circumstances exist. The time extensions are not subject to Section (1)(a) unless the sign owners do not submit payment within the 30 day extension period.

(3) The department may make renewal applications available to the sign owner 90 days prior to the first day of July during the designated billing cycle year. The department will make the renewal applications available to the sign owner no less than 30 days prior to the first day of July of the designated billing cycle year.

(4) Completion of the renewal application prior to the expiration of the existing permit shall be the sole responsibility of the sign owner.

(5) Ensuring the department has the latest billing contact information including a valid email address shall be the sole responsibility of the sign owner.

(6) By signing the renewal application the sign owner certifies the sign site is still under valid lease, easement, or consent to the sign owner, or under the ownership of the sign owner including legal access to the sign location from private property, for purposes of maintaining the controlled sign.

#### **R933-2-10. Minimum Sign Maintenance Requirements.**

(1) Signs shall be properly maintained.

(a) Improper maintenance includes:

(i) paint faded or peeling extensively;

(ii) message not visible or illegible;

(iii) sheets or panels loose or sagging;

(iv) structural damage, or leaning; or

(v) abandonment.

(b) A sign with any of the deficiencies listed in Subsection R933-2-10(1)(a) is not in a reasonable state of repair, is in violation of the law, and is subject to permit revocation and removal. The department shall issue a Notice of Agency Action providing the sign owner a voluntary correction time frame prior to revocation and removal. The department shall provide this notice via certified mail to the sign owner as identified within the official sign inventory records maintained by the

department.

**R933-2-11. Outdoor Advertising Control and Permit-Related Fees.**

(1) All applicable outdoor advertising control and permit-related fees shall be determined in accordance with Utah Code 63J-1-504 and be contained within the department's approved fee schedule.

(2) Permit applications shall not be processed or reviewed until all applicable outdoor advertising control and permit-related fees have been paid in full.

(3) The fee for permits shall not be prorated.

**R933-2-12. Termination of Nonconforming Use Status.**

(1) The nonconforming use status of a controlled sign shall terminate and the status will become illegal under the following conditions:

(a) failure of the sign owner to respond to a Notice of Agency Action issued to renew a suspended permit;

(b) abandonment;

(c) failure to correct an identified outdoor advertising violation or failure to ask for a hearing after receiving proper notice pursuant to Section 72-7-508, failure to file a written response as required by law, or failure to appeal from an adverse decision of the department;

(d) purchase by the department under Section 72-7-510; or

(e) acquisition at any time by the department for highway construction.

**R933-2-13. Termination of On-Premises Status.**

An on-premises sign loses its on-premises status when the business or activity it advertises has ceased to exist for a period of 12 months at the site of the sign, and the message thereon is visible to the traveling public from a controlled route. The advertising copy on signs meeting this criterion may be removed at the expense of the sign owner or land owner or both without compensation to the sign or site owner as provided in Section 72-7-508 of the Act.

**R933-2-14. Removal of Illegal Signs.**

(1) Illegal or abandoned sign(s) removal from private property. The department shall provide the responsible party with a Notice of Agency Action prior to removing any illegal or abandoned sign(s) from private property.

(2) Signs placed within the state right-of-way may be removed without prior written notice.

(3) Permitted sign(s) affixed to private property that encroach on the state right-of-way may be given written notice to remove the installation from the right-of-way.

(4) The cost for the removal by department of an illegal or abandoned sign shall be assessed jointly and severally against the sign owner, landowner, occupant of the land or other responsible person, or any combination thereof, in accordance with Section 72-7-508.

(5) Storage Charges. Illegal or abandoned signs that have been removed by the department shall be stored at the nearest department shed. An appropriate fee shall be charged for storage. The storage charges shall be in addition to the costs of the removal of the illegal or abandoned sign.

(6) Redemption and Disposal. If the illegal or abandoned sign has not been claimed and redeemed within 60 calendar days from the date of removal a designated department official shall proceed to dispose of the stored illegal or abandoned sign by either utilizing the material contained therein for department purposes or destroying the sign. A statement of the sign disposal shall be made and filed with a designated person at the department.

**R933-2-15. Directional Signs.**

(1) Directional signs allowed under Section 72-7-504 shall conform to federal standards under 23 CFR Section 750.154.

**R933-2-16. Official Signs.**

(1) Prerequisites for erection and maintenance.

(a) Prior to erection of an official sign the public agency shall submit to the Outdoor Advertising Control Program, a completed permit application on an approved departmental form (Outdoor Advertising Permit Application). The form shall be completed in accordance with the instructions on the application.

(b) The sign shall be erected off the highway right-of-way, owned and maintained by the political subdivision, and located within the zoning jurisdiction of the political subdivision.

(2) Standards, Criteria and Restrictions.

(a) Only information of general interest to the traveling public may be placed on an official sign. Commercial advertising of a particular service, product or facility is prohibited.

(b) The sign shall be within the zoning jurisdiction of the city, town, or other public agency designated by the sign.

(c) No city, town or other political subdivision of the state may erect or maintain more than one sign at each approach to the off-ramp, facing oncoming traffic at the nearest point of turn off to a city, town or other political subdivision and in no event may more than two official signs, one for each direction of travel upon the controlled highway, be erected and maintained by or for the purpose of designating a city or town or other subdivision.

(d) No official sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate highway system, measured from the nearest point of pavement widening at the exit from the main traveled way.

(e) No official sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal.

(f) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of a controlled route, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(g) Any official sign erected or maintained under the Act and this rule may at any time be removed for cause and without compensation after a Notice of Agency Action is issued, if required. The owner of any official sign shall remove the sign at its own cost and expense.

(h) Official signs shall remain static and not be permitted or converted to digital display formats such as CEVMS signs.

(i) An Outdoor Advertising Permit for an Official Sign may not be transferred and may not display off-premises advertising.

**R933-2-17. Department Hearings.**

Any hearing regarding an application or conformance to the rule or statute for a sign shall be held in accordance with the Act, and in accordance with the Utah Administrative Procedures Act and Rule R907-1.

**KEY: signs**

September 23, 2015

Title 72, Chapter 7, Part 5

Notice of Continuation November 2, 2016

72-1-201

**R933. Transportation, Preconstruction, Right-of-Way Acquisition.****R933-5. Utah-Federal Agreement for the Control of Outdoor Advertising.****R933-5-1. Introduction.**

The Utah-Federal Agreement was executed by the governor of Utah and the secretary of the United States Department of Transportation's Federal Highway Administrator on January 18, 1968. It sets out the parameters by which Utah agrees to manage and regulate outdoor advertising along the federal highway system. Though never placed in the Utah Code, the legislature has ratified the governor's execution of the agreement under Section 72-7-501 (Supp. 2001).

**R933-5-2. Utah-Federal Agreement.**

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM.

THIS AGREEMENT made and entered into this 18th day of January, 1968, by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the Administrator, and the state of Utah, acting by and through its Governor, hereinafter referred to as the State.

Witnesseth:

WHEREAS, the governor is authorized by Senate Bill No. 94, enacted by the Thirty-seventh Utah State Legislature, to enter into agreements with the Secretary of Commerce, whose functions, powers and duties in regard to highway matters have been transferred to the Secretary of Transportation by Public Law 89-760, 89th Congress, on behalf of the State of Utah to comply with Title I of the Highway Beautification Act of 1965; and

WHEREAS, Section 131(d) of Title 23, United States Code provides for agreement between the Secretary of Transportation and the several states to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the interstate and primary systems which are zoned industrial or commercial under authority of state law or in unzoned commercial or industrial areas, which areas are also to be determined by agreement, and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the State of Utah elects to implement and carry out the provisions of Section 131 of Title 23, United States Code, and the national policy in order to remain eligible to receive the full amount of all federal-aid highway funds to be apportioned to such state on or after January 1, 1968, under Section 104 of Title 23, United States Code.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

**I. Definitions**

A. The term "Act" means Section 131 of Title 23, United States Code (1965), commonly referred to as Title I of the Highway Beautification Act of 1965.

B. Commercial or industrial zone means those areas which are reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinance or regulation, or enabling state legislation, including Highway Service areas lawfully zoned as Highway Service Zones, in which the primary use of the land is reserved for commercial and roadside services other

than outdoor advertising to serve the traveling public.

C. Unzoned commercial or industrial area means those areas not zoned by state or local law, regulation or ordinance, which are occupied by one or more industrial or commercial activities, other than outdoor advertising signs, the lands along the highway for a distance of 600 feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the Utah Road Commission.

All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and shall be along or parallel to the edge of pavement of the highway.

D. Commercial or industrial activities, for purposes of the unzoned area definition above, mean those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

1. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to wayside fresh produce stands.
2. Transient or temporary activities.
3. Activities not visible from the main-traveled way.
4. Activities conducted in a building principally used as a residence.
5. Railroad tracks and minor sidings.

Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of six continuous months, any signs located within the former unzoned area shall become non-conforming.

E. Sign means any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the interstate or federal-aid primary highway.

F. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign or sign structure.

G. Center line of the highway means a line equidistant from the edges of the median separating the main-traveled way of a divided interstate or other limited-access highway, or the center line of the main-traveled way of a non-divided highway.

H. Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

I. Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

**II. Scope of Agreement**

This agreement shall apply to:

A. All zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the interstate and primary systems within the State of Utah in which outdoor advertising signs, displays and devices may be visible from the main-traveled way of said system.

**III. State Control**

The State hereby agrees that, in all areas within the scope of this agreement, the State shall effectively control or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this agreement other than those advertising

the sale or lease of the property on which they are located, or activities conducted thereon, in accordance with the following criteria:

A. In zoned and unzoned commercial and industrial areas, the criteria set forth below shall apply to signs, displays and devices erected subsequent to the effective date of this agreement.

#### General

THE FOLLOWING SIGNS SHALL NOT BE PERMITTED

1. Signs which imitate or resemble any official traffic sign, signal, or device.

2. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

3. Signs which are erected or maintained in such a manner as to obscure, or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic.

#### Size of Signs

1. No sign shall exceed the following dimensions:

(a) Maximum area - 1000 square feet

(b) Maximum height--25 feet

(c) Maximum length--60 feet

2. The area shall be measured by the outer limits of the advertising space.

3. A sign structure may contain no more than two facings visible and readable from the same direction on the main traveled way on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

4. Back-to-back or V-type sign structures will be permitted with the maximum area being allowed for each facing; and considered as one structure and subject to spacing as herein below provided, but must be erected so that no more than two facings are visible to traffic in any one direction.

#### Spacing of Signs

1. Signs may not be located within 500 feet of any of the following which are adjacent to the highway:

(a) Public parks

(b) Public forests

(c) Playgrounds

(d) Cemeteries

2. Interstate Highways and Limited-Access Highways on the Primary System.

(a) Spacing between sign structures along each side of the highway shall be a minimum of 500 feet except that this spacing shall not apply to signs which are separated by a building or other obstruction in such a manner that only one sign located within the minimum spacing distance set forth above is visible from the highway at any one time.

(b) No sign may be located on an interstate highway or freeway within 500 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

3. Non-Limited Access Primary Highways.

The location of sign structures situated between streets, roads or highway entering into or intersecting the main traveled way shall conform to the following minimum spacing criteria to be applied separately to each side of the primary highway:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1000 feet, a minimum spacing between structures of 150 feet (double-faced, V-type and/or back-to-back) may be permitted between such intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1000 feet or more, minimum spacing between sign structures (double-faced, V-type and/or back-to-

back) shall be 300 feet.

#### 4. Explanatory Notes

(a) Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.

(b) Only roads, streets and highways which enter directly into the main-traveled way of the primary highway shall be regarded as intersecting.

(c) Official and "on premise" signs, as defined in Section 131 (c) of Title 23, United States Code, shall not be counted nor shall measurements be made from them for purposes of determining compliance with the above spacing requirements.

(d) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs.

#### Lighting

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

#### IV. Interpretation

The provisions contained herein shall constitute the acceptable standards for effective control of signs, displays, and devices within the scope of this agreement.

Nothing contained herein shall be construed to abrogate or prohibit a municipality from exercising a greater degree of control of outdoor advertising than that required or contemplated by the Act of from adopting standards which are more restrictive in controlling outdoor advertising than the provisions of this Agreement.

Standards and criteria contained in Section III shall apply to signs erected subsequent to the effective date of this Agreement. Existing signs in zoned and unzoned commercial or industrial areas will be considered to be conforming to said standards and criteria.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress, or the provisions of Chapter 51, Section 5, Laws of Utah, 1967, are amended by subsequent action of the Utah state Legislature, the parties reserve the right to re-negotiate this Agreement or to modify it to conform with any amendment.

#### V. Effective Date

This agreement shall become effective when signed and executed on behalf of both the State and the United States of America.

IN WITNESS WHEREOF, the State has caused this Agreement to be duly executed in its behalf, and the Secretary of transportation has likewise caused the same to be duly executed in his behalf, as of the dates specified below.

**KEY: outdoor advertising, interstate highways**

**June 4, 2002**

**Notice of Continuation November 2, 2016**

**72-7-501**